Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, OLC, RR, LRE, FFT**

Introduction

This hearing was convened as a result of two applications for dispute resolution (collectively the "Current Applications") made by the Tenant's under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities ("10 Day Notice") pursuant to section 46;
- an order to seek a monetary order for compensation from the Landlord pursuant to section 67;
- an order that the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or the tenancy agreement pursuant to section 62;
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

An agent ("DK") of the Landlord and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Dismissal of Tenant's Application

At the outset of the hearing, the Landlord and Tenant agreed the Tenant vacated the rental unit April 25, 2022. As such, the Tenant's claim for cancellation of the 10 Day Notice was moot and it was no longer necessary for me to consider whether the 10 Day

Notice should be cancelled. As such, I dismiss the Tenant's claim for cancellation of the 10 Day Notice without leave to reapply.

As the Tenant is no longer residing in the rental unit, the Tenant's claims made in the Current Applications for (i) an order that the Landlord to comply with the Act, Regulations and/or tenancy agreement, (ii) an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord; and (iii) an order suspending or setting conditions on the Landlord's right to enter the rental unit are now moot and it is no longer necessary for me to consider those claims. As such I dismiss those claims without leave to reapply.

I noted that the Tenant had filed three applications for dispute resolution ("Prior Applications") on an earlier date and in each of the Prior Applications the Tenant sought monetary compensation from the Landlord. The Prior Applications were heard ("Prior Hearing"), together with two applications made by the Landlord, by an arbitrator of the Residential Tenancy Branch on March 28, 2022. The arbitrator who presided over the Prior Hearing issued a decision dated March 28, 2022 ("Prior Decision") in which the arbitrator dismissed all of the Prior Applications without leave to reapply and the arbitrator granted the Landlord an Order of Possession and a Monetary Order for unpaid rent. The Tenant made an Application for a Review Consideration ("Review Application") of the Prior Decision, the Order of Possession and the Monetary Order. The arbitrator who considered the Review Application found the Tenant had not grounds for the review, dismissed the Review Application and affirmed the Prior Decision, the Order of Possession and the Monetary Order.

I have reviewed the monetary claims for compensation made by the Tenant in the Prior Applications and those in the Current Applications. The amounts of compensation claimed in each of the Prior Applications and the Current Applications are different. However, the description of the claims themselves made by the Tenant in the Current Applications appear to be the same as the description of the claims made by the Tenant in the Prior Applications, namely (i) the alleged lack of habitable property for months while the Landlord collected rent in full, (ii) shortcomings in the rental unit throughout the period, and (iii) the costs of preparation of applications for dispute resolution made by the Tenant.

The Landlord argued that the relief sought by the tenant for compensation in the Current Applications was not available to the Tenant, as the Tenant had either already applied made those claims in the Prior Applications and those claims for monetary compensation had been dismissed without leave to reapply by the arbitrator in the Prior

Decision. As such, the Landlord argued that the principal of *res judicata* should apply.

In a prior decision of the RTB made on December 20, 2013 ("2013 Decision"), the arbitrator stated:

> The Landlord submits that portions of the Tenant's claim are barred by theprinciple of *res judicata*. This principle provides that a matter which has already been conclusively decided by a court is conclusive between the parties. Final judgments prevent any re-examination or re-trial of the same dispute between the same parties. The Supreme Court of British Columbia in *Jonke v. Kessler*, Vernon Registry, Docket No. 3416 dated January 16, 1991 held that the principle of *res judicata* applies to residential tenancy arbitration. The policy reasons in favor of the principle are set out in a decision of Hardinge L.J.S.C., in *Bank of B.C. v. Singh* 17 B.C.L.R. (2d) 256 as follows:
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> " ... While people must not be denied their day in court, litigation must come to an end. Thus litigants must bring theirwhole case to court and they are not entitled to relitigate the same issues over and over again. Nor are litigants entitled to argue issues that should have been before the court in a previous action ... "
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> The principle of *res judicata* prevents a party from bringing to litigation not only a matter that was previously heard, but also a matter that should have been heard at that previous arbitration. Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamche v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*,Prince George Registry, Docket No. 28394 dated November 15, 1996, quoted with approval the following passage from the judgment of
> *Henderson v. Henderson*, (1843), 67 E.R. 313
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> "In trying this question I believe I state the rule of the court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a

> judgment, but to every point which properly belonged to the subject of litigation and whichthe parties, exercising reasonable diligence, might have brought forward at the time."

While arbitrators are not bound by prior decisions of an arbitrator of the Residential Tenancy Branch, prior decisions provide auseful resource as to the state of the law as it relates to the Act and may be afforded persuasive weight.

I find the 2013 December to be applicable to the current hearing, and to be persuasive of the issue before me. I find that the principle of *res judicata* applies not only to the claims that were dealt with in the Prior Decision, but also, pursuant to the December 2013 and the cases cited therein, to the claims and issues that *should* have been brought in the Prior Applications. In addition to the 2013 Decision, I rely on Rule 2.9 of the *Residential Tenancy Branch Rules of Procedure* which states:

2.9 No divided claims

An applicant may not divide a claim.

Pursuant to Rule 2.9, all the issues raised in the Current Applications should have been raised in the Prior Applications, and I cannot adjudicate them.

Lastly, section 62(4) of the Act states:

> 62(4) The director may dismiss all or part of an application for dispute resolution if
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> (a) there are no reasonable grounds for the application or part,
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> (b) the application or part does not disclose a dispute that may be determined under this Part, or
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> (c) the application or part is frivolous or an abuse of the dispute resolution process.

The Tenant made three claims for compensation in the Prior Applications and two claims for compensation in the Current Applications. I find the multiplicity of claims, relating to essentially the same issues in the Current

Application as in the Prior Applications is an abuse of the dispute resolution process.

Based on the principle of *res judicata* and on section 62(4)(c), I dismiss the Tenant's claim for monetary compensation from the Landlord without leave to reapply.

As I have dismissed all of the claims made by the Tenant in the Current Applications without leave to reapply, I dismiss the Current Applications in their entirety without leave to reapply.

Conclusion

The Current Applications are dismissed in their entirety without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 22, 2022

Residential Tenancy Branch