Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S; FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for damage to the rental unit in the amount of $1378.25 pursuant to section 67 – security deposit applied to claim;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72(1).

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified he served that the tenant with the notice of dispute resolution form and supporting evidence packages via registered mail on January 17, 2022 and January 24, 2022. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The tenant confirmed receipt of the notice of dispute resolution package via registered mail but could not recall the exact date. I find that the tenant was deemed served with these packages on January 22, 2022 and January 29, 2022 respectively, in accordance with sections 88, 89, and 90 of the Act.

The tenant testified that she served the landlord with her evidence via registered mail on July 29, 2022. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The landlord confirmed receipt of this evidence on or about the 11th of August 2022 upon return from a vacation. I find that the landlord was deemed served with this evidence on August 3, 2022, five days after the tenant mailed it, in accordance with sections 88 and 90 of the Act.

Neither party raised any concerns regarding the service of the Application for Dispute Resolution of the documentary evidence. Both parties said they had received the application and/or the documentary evidence from the other party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

Preliminary Matter: Res Judicata

The tenant argues that the matter has already been decided in a decision of another arbitrator dated December 22, 2021. That hearing number is quoted on the cover sheet of this Decision ("December Decision"). The tenant submitted a copy of the December decision into evidence. She argued that the

landlord's application must be dismissed on the legal basis that the matter has already been decided (*res judicata*).

"Res judicata" is a rule of law that a final decision, determined by an arbitrator with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the Parties, and constitutes an absolute bar to a subsequent application involving the same claims.

Black's law Dictionary (8th Edition) defines *res judicata,* in part as follows:

> A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. [emphasis added]

The issue considered in the December decision was the tenant's application by way of an *ex parte* Direct Request Proceeding for a monetary order for the return of a security deposit and to recover the filing fee. In the December decision, the arbitrator considered all the documentary evidence available. Near the end of that decision, the arbitrator concluded:

> I accept the evidence before me that the Landlord has failed to return the security deposit to the Tenant and did not file an Application for Dispute Resolution requesting to retain the security deposit by November 4, 2021, within the fifteen days granted under section 38(1) of the *Act*.

The arbitrator went on to grant the tenant double the amount of the security deposit:

> Based on the foregoing, I find that the Landlord must pay the Tenant double the amount of the security deposit in accordance sections 38(6) of the *Act*. [reproduced as written]

I note that there is no evidence before me that the landlord appealed that decision to the Residential Tenancy Branch (RTB) or to the BC Supreme court (BCSC) via judicial review. As such, I find that the landlord accepted that decision of the RTB.

Carefully considering the evidence before me in this matter, I find that the landlord is attempting to convene a new participatory hearing to have the original decision set aside and obtain a new decision on a matter already decided.

As set out in *Dhillon v. Robertson,* 2020 BCSC 641:

> [193] The doctrine of *res judicata* prevents the re-litigation of issues that have been determined with finality in previous litigation between the same parties: *Doering v. Grandview (Town),* 1975 CanLII 16 (SCC), [1976] 2 S.C.R. 621. This doctrine provides

> litigants with the certainty that once a matter has been before the court the court's determination is final, subject only to appellate review.
>
> [194] The three requirements for cause of action and issue estoppel are well known:
> i. The claim or issue was (or, in the case of cause of action estoppel, out to have been) decided in a previous litigation;
> ii. The previous litigation or decision was final; and
> iii. The parties in the current litigation, or their privies, were parties to the previous litigation or decision.

In this case, (i) I find that the issue was decided in a previous arbitration; (ii) the previous arbitration decision was final, as the landlord did not dispute the finding through appeal or judicial review; and (iii) the parties to the current arbitration were parties to the previous arbitration decision.

The landlord could have filed for Review Consideration or Judicial Review within the prescribed time frames and did not do so. Accordingly, I dismiss the landlord's application without leave to reapply as the matters have already been decided by the Director in a prior decision.

Conclusion

Since the matter has already been decided in a prior arbitration, there is no remedy available. The landlord's application is dismissed 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: August 18, 2022

Residential Tenancy Branch