Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution ("Application") filed by the Landlord pursuant to the *Residential Tenancy Act* (the "Act"). The Landlord applied for the following:

- a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused during the tenancy 67; and
- authorization to recover the application fee of the Application from the Tenant.

An agent ("DS") and the personal representative ("TE") of the estate of the Tenant attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord stated she served the Notice of Dispute Resolution Proceeding ("NDRP") and an amendment ("Amendment") to the Application, dated March 11, 2022, on the TE. TE acknowledged receipt of the NDRP and Amendment. I find TE was served with the NDRP and Amendment in accordance with the provisions of section 89 of the Act.

Preliminary Matter – Amendment to Name of Respondent

I noted that the respondent named in the Application was the name of the Tenant who passed away. DS acknowledged the Landlord had taken back possession of the rental unit on or about February 29, 2022. The Landlord and the estate of the Tenant each made applications for dispute resolution against each other ("Previous Applications"). The Previous Applications were heard together and at the hearing, the Landlord and TE settled their clams with each other. The settlement between the Landlord and TE was documented in a decision of an arbitrator of the Residential Tenancy Branch dated

March 5, 2022 (“Original Decision”). The terms of the settlement have been frustrated and the Landlord brought the Application.

Residential Tenancy Policy Guideline 43 (“PG 43”) addresses naming parties to an application for dispute resolution. Part D of PG 43 states:

> **D. NAMING AN ESTATE OF A PERSON WHO HAS DIED**
>
> Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased’s estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased’s personal representative at the time of filing an Application for Dispute Resolution, the deceased’s name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.
>
> The personal representative may be the person named as executor in the deceased’s will, or the person who has been approved by the court to administer the estate by way of an estate grant.
>
> The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

The Landlord knew, from the Previous Applications, that the name of the personal representative of the estate of the Tenant was TE. As such, the Landlord should have named the personal representative as the respondent in the Application, as outlined in Part D of PG 43 rather than naming the deceased Tenant.

Rules 7.12 and 7.13 of the *Residential Tenancy Branch Rules of Procedure* states:

> **Adding additional parties**
>
> **7.12 Request that another person be added to a proceeding**
>
> In exceptional circumstances, a party may make an oral request at the hearing to add another party.

7.13 Determining that another person be added as a party

At the request of a party under Rule 7.12, the arbitrator will decide whether a person will be added as a party.

In addition, the arbitrator may unilaterally determine that another person should be added as a party.

The newly added party will be added to the proceedings without the need for further revision of the Application for Dispute Resolution.

All Rules of Procedure apply to the newly added party, with the exception of Rules establishing timeframes for the exchange of evidence.

As soon as possible after a party is added to a proceeding, the original applicant(s) and respondent(s) must serve their evidence on the newly added party.

The newly added party must, as soon as possible, serve their evidence on the original applicant(s) and respondent(s) and submit it to the Residential Tenancy Branch directly or through a Service BC Office, and in any event not less than seven days before the reconvened hearing.

The Landlord should have named TE as the personal representative of the estate of the Tenant. Pursuant to Rule 7.13, I order the Application be amended to replace the name of the deceased Tenant with TE as the personal representative of the estate of the Tenant. As TE attended the hearing and acknowledged receipt of the NDRP and Amendment from the Landlord, it is unnecessary for me to make any orders regarding service of the NDRP and Amendment on TE.

Preliminary Matter – Application of the Principle of *Res Judicata*

The claim for compensation by the Landlord for replacement of a fire door made in the Application is the same as the claim for compensation for replacement of a fire door that was settled between the Landlord and TE, the terms of which are documented in the Original Decision. The principle of *res judicata* applies to residential tenancy dispute resolution hearings. 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 Columbiain 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:

"...While people must not be denied their day in court, litigation must come to an end. Thus litigants must bring their whole 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..."

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

> "In trying this question I believe I state the rule of the court correctly when I saythat, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the partiesto 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 subjectof litigation and which the parties, exercising reasonable diligence, might have."

I find the claim made by the Landlord for compensation in the Application is related to the same subject matter and between the same parties and that the Landlord and TE have settled this claim as documented in the Original Decision. As such, I find the principle of *res judicata* applies and the Landlord is prevented from relitigating this matter again. Furthermore, I find I do not have the statutory authority to interpret the

settlement agreement made between the parties. Based on the foregoing, I order the Application to be dismissed in its entirety without leave to reapply.

In these circumstances, the Landlord has the option of obtaining legal advice to determine the appropriate court or tribunal in British Columbia that has the authority to interpret the settlement agreement and to make orders for its enforcement. Alternatively, if the parties are agreeable, they have the option of amending the current settlement agreement or making a new settlement agreement that supersedes the terms of the existing settlement agreement.

Conclusion

The Application is dismissed in its 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: August 23, 2022

Residential Tenancy Branch