



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the Residential Tenancy Act, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the Residential Tenancy Act (the "Act") for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant HY attended the hearing with a support friend, SV. The landlord attended the hearing with a certified interpreter, HQ. The tenant acknowledged receipt of the landlord's Notice of Dispute Resolution Proceedings package but stated she does not believe all the landlord's evidence was provided to her. I advised the tenant that if the landlord refers to any piece of evidence not in her possession, the tenant should interrupt the proceedings to advise me of that. The tenant indicated she understood.

The landlord argued that the tenant's supporter should not be allowed to be present for the hearing as he was disruptive at a different proceeding before the small claims court. I ruled that the tenant's supporter could remain present during the proceedings on the condition that he not speak unless I asked him to do so. The tenant's support person did not speak during the hearing.

Preliminary Issue 01

The landlord named the tenant's daughter as a tenant in his application for dispute resolution. The tenant's daughter did not sign the tenancy agreement and does not meet the definition of tenant under the *Residential Tenancy Act* as she was simply an occupant of the rental unit. I have removed the tenant's daughter as a party in the cover page of this decision.

Preliminary Issue 02

In her evidence package, the tenant supplied copies of previous decisions made by two arbitrators of the Residential Tenancy Branch and an Order made by the Supreme Court of B.C. The file numbers of the previous decisions are recorded on the cover page of this decision.

In the first decision dated April 9, 2021, Arbitrator Green granted a monetary order against the landlord in the amount of \$9,150.00 which includes an order to recover a security deposit, doubled. The landlord filed a petition for judicial review at the Supreme Court and the petition was dismissed by Mr. Justice G.P. Weatherill on October 21, 2021.

In the second decision dated December 7, 2021, Arbitrator McKay considered the merits of the landlord's application seeking monetary compensation against the tenant. The arbitrator dismissed the landlord's application with the exception of the landlord's claim to recover a month's rent. She also granted the landlord leave to reapply for further monetary compensation in the event Arbitrator Green's decision be set aside by the Supreme Court.

The landlord testified that he didn't agree with Arbitrator McKay's decision. He argues that her decision was unreasonable because of her collegial relationship with Arbitrator Green and for that reason, Arbitrator McKay's decision could not be too different from that of Arbitrator Green. Arbitrator McKay's decision was too much in favour of the tenant and the landlord is not satisfied with it because it's unreasonable and he has the right to appeal the decision.

When I asked the landlord whether he filed for a judicial review of Arbitrator McKay's decision, the landlord responded that he believed that was the purpose of today's hearing. He testified that he is not experienced and thought he could just apply again.

Analysis

The legal doctrine of **res judicata**, is Latin for "the thing has been judged". Res judicata prevents someone from re-litigating an issue that has already been determined by a

competent jurisdiction. In practice, this means that if a person files an application and loses, that person cannot simply go before a different arbitrator and have the same matter heard again.

In examining the application before me and comparing it with the application determined by Arbitrator McKay, I find both applications are nearly identical.

Application before me	Application before Arbitrator McKay
Breach of tenancy agreement \$2250;	1.5 months rent \$2025 has to be paid as a penalty for the breach of RTA by the tenants.
loss of 3-month rent \$4500;	She is responsible for our loss of three months rent \$4050 from July to Oct 2020.
Extra electrical bills \$1131;	The extra electrical bill \$ 1131 has to be paid by the tenants because of her bad behaviour.
loss of work income \$2000;	The loss of working wage is \$2000
loss of quiet life enjoyment \$5000;	She violated our human rights such as threatening our safety and health, frame-up, bully, illegal subleasing, so I claim for \$15200 for the loss and damage of our human rights
loss of health \$12538;	She violated our human rights such as threatening our safety and health, frame-up, bully, illegal subleasing, so I claim for \$15200 for the loss and damage of our human rights
filing .copying and printing \$300 ;	The cost of the filing fee \$100 and coping and printing \$ 200 are paid by the tenants.
Damage of the gate and its lock, adding service fee\$600;	The tenant damaged our gate and lock because she often kicked the gate heavily with her feet and bike
Damage of two blinds and service fee \$500;	She damaged two blinds in the wrong way of closing and opening.

replaced two locks and service fee \$500;	She subleased our rental unit without informing and getting permission, we had to replace two locks with new ones.
Cleaning and sanitizing ,resetting furniture in original place \$600	She has to pay \$600 for cleaning the rental unit and repositioning furniture because she didn't do that.
still owned the landlord the rent \$ 1350	(rent of \$900.00 awarded by Arbitrator McKay)

Based on the legal doctrine of Res Judicata and Cause of Action Estoppel, the landlord is prevented from re-litigating the issues already decided by Arbitrator McKay in her decision dated December 7, 2021. For this reason, the landlord's application is dismissed without leave to reapply.

Conclusion

This 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: March 21, 2023

Residential Tenancy Branch