



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened upon the application of the landlord seeking:

1. A monetary Order for damage to the rental unit;
2. An monetary Order for money owed or compensation for damage or loss under the Act; and
3. Recovery of the filing fee.

In total the landlord seeks \$3,727.50

Both parties appeared and gave evidence under oath.

Background and Evidence

The evidence shows that this tenancy was the subject of a previous hearing and decision rendered on August 31, 2009. In that decision the landlord presented a claim for damages to the property and was awarded \$5,267.82. The landlord now seeks:

Due to damages done by the tenants and the time it took to repair them we lost one month's rent	\$1,600.00
Damage to landscaping and contamination of soil	1,627.00
Compensation for damage to tool shed	500.00
Total Sought	\$3,727.00

The landlords states that the reason he did not bring these claims with the original Application for Dispute is because he was giving the tenants the benefit of the doubt

that the grass would grow. With respect to the tool shed in their submissions the landlord says they have discovered that parts are no longer available for the shed and it will have to be replaced. With respect to rent, the landlords say that they are claiming rent for the month of April 2009 which they say they lost.

Analysis

The issue is whether the landlord, having already sought and obtained a monetary order for loss of rent and damages to the rental property is now precluded from making a second application for additional amounts of rent and damages to the rental property amounts that could have been, but were not included in the original application.

The following passages from the text: **Res Judicata**, Spencer-Bower and Turner, 2nd ed. (London: Butterworths, 1969) were expressly adopted and applied to circumstances analogous to those before me on this application in the decision of the Supreme Court of British Columbia In *London Life Insurance Company v. Zavitz et al*, [1990] S.C.B.C., Vancouver Registry No. C881705:

At page 359 of **Res Judicata** the required elements to support a plea of “former recovery” are set out:

- (i) That the former recovery relied upon was obtained by such a judgment as in law can be the subject of the plea.
- (ii) That the former judgment was in fact pronounced in the terms alleged;
- (iii) That the tribunal pronouncing the former judgment had competent jurisdiction in that behalf;
- (iv) That the former judgment was final;
- (v) That the Plaintiff, or prosecutor, is proceeding on the very same cause of action, or for the same offence, as was adjudicated upon by the former judgment;
- (vi) That the parties to the proceedings, or their privies, are the same as the parties to the former judgment, or their privies.

The learned author commented further at p. 380:

... where there is substantially only one cause of action, and it is a case, not of "splitting separable demands", but of splitting one demand into two quantitative parts, the plea [of **res judicata**] is sustained. In homely phrase, a party is entitled to swallow two separate cherries in successive gulps, but not to take two bites at the same cherry. He cannot limit his claim to a part of one homogeneous whole, and treat the inseparable residue as available for future use, like the good spots in the curate's egg.

... Thus, where the omitted matter is a portion of the entire sum, or an item or parcel of the entire property, recoverable on a single cause of action, the judgment is a bar to any subsequent action in respect of such omitted matter.

In the application before me the parties are identical to the parties in the former proceeding. The August decision and order was an order with respect to loss of rent and damages. The former judgment was final.

The claim before me, as was the prior claim, is one for rental loss and damages. I find that the applicant, by bringing this second application is splitting one homogenous claim into two quantitative parts. The landlord has supplied insufficient evidence to show why, through due diligence, he could not have known or discovered he should have included these current claims with the first claim. I find that the full amount of these claims was recoverable on a single cause of action.

I find that the August 31, 2009 decision and order that granted the landlord a monetary order for rent and damages constitutes a bar to a subsequent claim for rent and damages that was omitted from the applicant's original claim. The application is dismissed without leave to reapply.