Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, O, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenants' security deposit in partial satisfaction of the monetary award. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?
Is the landlord entitled to retain the tenants' security deposit?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy ended in 2013. In December 2013 the landlord filed an application for dispute resolution to claim a monetary award for the cost to repair damage to the rental unit alleged to have been cause by the tenants and for an order to retain the tenants' security deposit. The landlord's application was scheduled to be heard by conference call on March 21, 2014. The tenants called in to the conference at the appointed time. The landlord did not attend, although it was the hearing of his application. By decision dated March 21, 2014 the landlord's application was dismissed. He was not granted leave to reapply.

On March 25, 2014 the landlord's agent called the Residential Tenancy Branch. She stated that the landlord had been unable to attend the hearing because he was overseas and she was not able to attend as the landlord's agent because she had been working. The landlord's agent was told that the landlord's application had been dismissed because the landlord did not attend.

On March 26, 2014 the landlord filed a new application to claim the same relief as he claimed in the previous application that was dismissed. The landlord said that he was unable to attend the previous hearing because he was travelling and could not telephone into the conference call hearing because of his travel arrangements. He said that he filed a new application because he was unable to attend the original hearing.

The tenants objected to the hearing of the landlord's new application because it was for exactly the same claim that he previously brought. They said that they attended the original hearing and they were told by the arbitrator that his application was dismissed and if he attempted to bring a new application they should make the next arbitrator aware that the landlord's claim has already been dealt with and dismissed.

Analysis

The issue on this application is whether the landlord, having already applied for a monetary order for damage to the rental unit that was dismissed is now precluded from making a second application to claim damages for precisely the same matters that were the subject of his first 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.

In Evin's Cont. Ltd. v. Bank of Montreal, 1987 CanLII 2512 (BC S.C.), Leggatt L.J.S.C noted that with respect to *Res judicata and issue estoppel:*

> Most of the leading cases on this subject look back to the decision of Vice-Chancellor Wigram in *Henderson v. Henderson* (1843), 3 Hare 100, 67 E.R. 313 [at 319]:
>
> … 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 judgement, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

In the application before me the parties are identical to the parties in the former proceeding. The March 21st 2014 decision was a decision with respect to a monetary claim for damage to the rental unit alleged to have been caused by the tenants during the tenancy. The decision dismissing that claim was final. The claim before me, as was the prior claim, is one for damage to the rental unit during the tenancy. I find that the March 21, 2014 decision dismissing the landlord's claim for damage to the rental unit does constitute a bar to a subsequent claim for compensation for the same matters claimed in the first application.

For the reasons stated the landlord's application for dispute resolution is dismissed without leave to reapply.

Conclusion

At the hearing the tenants requested the return of their security deposit stated to be the sum of $1,025.00. Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenants' security deposit; I so order and I grant the tenants a monetary order in the amount of $1,025.00, being the amount of the tenant's security deposit as confirmed by the landlord's documents. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: July 17, 2014

Residential Tenancy Branch