



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the relevant submitted documentary evidence by the other party. As both parties attended and had no issues regarding the submitted documentary evidence, I find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

The respondent, KM raised an issue with the applicant's claim regarding jurisdiction. The respondent stated that a previous dispute filed by the respondent was determined as being dismissed as an Arbitrator of the Residential Tenancy Branch declined jurisdiction in this relation between these two parties.

In that decision, the applicant was an estate. A finding was made in the decision on January 29, 2016 that the relationship lacked the elements of a tenancy agreement and jurisdiction was declined as it was determined that this was a family dispute arising out of an estate matter. In this application both parties confirmed that both parties remained the same yet the tenant/applicant has named the sibling, K.M. (the executor) instead of the estate. Both parties confirmed that this dispute was a result of the same relationship for the time period between August 1, 2013 and December 29, 2015. Neither party has filed for review of the January 29, 2016 decision and have in fact agreed to it. In this case both parties are in agreement that the dispute arises out of the same relationship determined to be a family dispute arising out of an estate matter.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement

of an earlier judgment. It also precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

The previous Arbitrator made a finding declining jurisdiction as this was a family matter and not a matter involving a landlord/tenant relationship. During the hearing, both parties confirmed that the current application was a monetary claim to recover compensation between the two parties over the same relationship decided upon on in the January 29, 2016 decision. I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

The tenant's application is dismissed for lack of jurisdiction.

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, 2016

Residential Tenancy Branch