Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; his legal counsel; his witness and two agents for the landlord.

Prior to the hearing the landlord submitted evidence that suggested that this matter had already been determined in a hearing in January 2016. The tenant submitted a copy of the decision that resulted from that hearing as evidence.

The decision dated January 8, 2016 outlined that the tenant sought, in part, an order to require the landlord to make repairs and have the ventilation system ducts cleaned. The decision dismissed the tenant's Application for Dispute Resolution in its entirety. The tenant submits in his current Application that he seeks an order to have the landlord make repairs relating to an issue with the air ducts.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

The tenant's legal counsel submitted that the issue in this case is related to maintenance of the property and as such the doctrine of *res judicata should* not apply. She submitted that maintenance is an ongoing issue and Section 32 of the *Act* requires the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Legal counsel also submitted that the landlord's obligation to ensure health and safety of tenants is also ongoing. Counsel provided that this obligation is of paramount significance to the tenant because of his respiratory condition.

The tenant confirmed, in his testimony, that there is no change in the circumstances or the nature of his request for the repairs that he has identified as emergency repairs. The tenant did submit that his medical condition was worsening. He stated that the reason he had not submitted the evidence he now has submitted is that he was not aware that he had to submit such evidence.

As the tenant has submitted that the only change in the circumstances that his medical condition has worsened, I have considered the tenant's medical evidence that he has provided.

The only medical documentation submitted by the tenant was a copy of a letter from his physician dated July 6, 2016 which stated:

> "The above named patient has a history of chronic obstructive lung disease. He would benefit from removal of any carpet material in his apartment, and replacement with an easier to clean and less dust collecting material, such as laminate or hard wood floors."

I note there is no mention in the tenant's only medical documentation that the tenant's condition has progressed or worsened in anyway. In addition, the letter makes no mention of any concerns the tenant's physician had in relation to the ventilation the system. I am not persuaded, from this evidence, that the tenant's medical condition has worsened or that if it has it has been a result of the landlord's failure to comply with his request for the repairs sought in this Application. As such, I find the tenant has failed to establish that this circumstance has changed since the previous hearing.

As a result, I find the parties are identical to the parties in the former proceeding resulting in the January 8, 2016 decision. I also find that the decision was rendered with respect to repairs to the ventilations system. I find that the former judgment was final.

The claim before me, as was the prior claim, is one for the same repairs to the ventilation system. I find, based on the tenant's own testimony and medical documentation, the only change in the circumstances since the tenant brought forth his original claim was that he has obtained more evidence.

While I find the tenant's legal counsel's position that maintenance and the landlord's obligations for health and safety is an ongoing issue and therefore not subject to the doctrine of *res judicata* compelling, I not persuaded, for the reasons noted above, that such an exemption is warranted in this case.

Based on the above, I find the matters set forth in this Application for Dispute Resolution are *res judicata.*

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to make repairs and emergency repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 67, and 72 of the *Residential Tenancy Act (Act).*

Conclusion

As I have determined the matters in this Application have been previously adjudicated and the doctrine of *res judicata* applies, I order the tenant's Application for Dispute Resolution is dismissed, in its entirety.

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: December 16, 2016

Residential Tenancy Branch