



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Check Reality
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, RP

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for regular repairs, pursuant to section 32; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant, property manager N.S. and property manager C.C. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the tenants' application for dispute resolution was personally served on the landlord. I find that the landlord was served in accordance with section 89 of the *Act*.

Preliminary Issue- Jurisdiction

The agent testified that tenant E.D. already made this application for dispute resolution and that it was heard by the Residential Tenancy Branch on June 1, 2020 (the "First Application"). The agent provided the file number for the previous application and a copy of the decision. The file number for the previous file is located on the cover page of this decision. The tenants' First Application was **dismissed without leave to reapply** due to the tenants' failure to appear.

Tenant E.D. testified that she was not able to attend the June 1, 2020 hearing because her child was sick. Tenant E.D. testified that she called the Residential Tenancy Branch was told that she could file a new application for dispute resolution and request similar compensation as long as she provided slightly different grounds.

The Dispute Management Notes on this file show that the tenant called an information officer at the Residential Tenancy Branch on one occasion after the first hearing. The file note states:

TNT CALLED, ID VERIFIED. GAVE INFO ON REVIEW APP -
CAUTIONED TIMELINES. CONFIRMED MAY SEND IN REVIEW WITH
EVIDENCE TO HSRTO EMAIL - TO SUPPORT WHY COULDN'T CALL
INTO HRG.

Tenant E.D. testified that she did not file an application for review consideration for the First Application.

Tenant E.D. testified that in the First Application she did not specifically state that mold was an issue; however, she did intend to raise mold in the First Application. Tenant E.D. testified that this application specifically states that mold is an issue.

Agent N.S. testified that mold was raised in the First Application on the Notice of Hearing. The Notice of Hearing for the First Application states:

The trailer has a strong odor like something is dead and of mold, Ive had to block off one of the rooms the worst one but others are just as bad. The mold needs to be tested asap. I am concerned about our health. I have been asking since i moved in

The First Application was for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for regular repairs, pursuant to section 32; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

In the First Application the tenant claimed monetary damages for:

- items damaged in her home, allegedly by the landlord and or the landlord's agents and or tradespeople;

- ½ of the rent paid to the landlord for the duration of the tenancy for repairs requested but not completed throughout the tenancy;
- repairs to be made; and
- rent reduced for repairs.

In this application the tenants are claiming:

- ½ of the rent paid to the landlord for the duration of the tenancy for repairs requested but not completed throughout the tenancy;
- repairs be made; and
- rent reduced for repairs.

I find that this current application is substantially the same as the First Application.

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 re-litigation 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.

I find that this application is *res judicata*, in accordance with the test for cause of action estoppel (a branch of *res judicata*) confirmed in *Erschbamer v. Wallster*, 2013 BCCA 76, and cannot be heard because:

1. there is a final decision of a court of competent jurisdiction in the prior action;
2. the parties to the previous application were parties to, or are in privity with the parties to, this action;
3. the cause of action in the prior application is not separate and distinct; and
4. the basis of the cause of action could have been argued in the prior action if the parties had exercised reasonable diligence.

The tenants' application is dismissed without leave to reapply 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: September 17, 2020

Residential Tenancy Branch