

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

RESIDENTIAL TENANCIES DIVISION

RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO. R2023/8942

CATCHWORDS

Claim for compensation for breach of fixed term agreement – bond repayment application dealing with substantially the same dispute already determined by the Tribunal – cause of action estoppel.

Sections 419A, 452 and 472 of the *Residential Tenancies Act 1997*.

APPLICANT	Chris and Sonja Moustra
RESPONDENT	Tosh Elder Bianca Elder
WHERE HELD	55 King St, Melbourne
BEFORE	S Cohen, Member
HEARING TYPE	Hearing
DATE OF HEARING	9 August 2024
DATE OF ORDER	20 August 2024
CITATION	Moustra v Elder (Residential Tenancies) [2024] VCAT 813

ORDER

1. The application is dismissed.

S Cohen
Member

APPEARANCES:

For Applicant Maria Kominakis, Belle Property Mount
Waverley

For Respondent Bill Mavropoulos, Beharis & Co



REASONS

The compensation application

1 This is an application by residential rental providers Chris and Sonja Moustra under section 452(1) of the *Residential Tenancies Act 1997* (Vic) ('the Act') for compensation of \$1,060 ('the compensation application'). The compensation application relates to rented premises at 3 Sandham St, Elsternwick, and the renters are Tosh and Bianca Elder.

2 The compensation application, under the heading '*More details about the claim,*' states:

The Renters [were] issued a 90 day notice for end of fixed term rental agreement in the 1st term tenancy. Rental agreement commenced 9/04/2022 and fixed term ends 8/04/2023. NTV date is the date of rental agreement expiry date 8/04/2023. After receiving the 90 day notice, renters provided 14 days notice of their intention to vacate on 28/03/2023 prior to the fixed term end date. Renters were informed they are required to pay rent to the rental agreement expiry date even if they vacate earlier, renters refused to pay and short paid as they believe they only pay to 14 days notice date. The rent is \$2824pcm. Rent owing to end of fixed term rental agreement and notice termination date is \$1060.00. This claim is separate from any bond claim.

3 The compensation application was listed for hearing on 9 August 2024.

The related bond application

4 On the day of the hearing the respondents sought orders dismissing the proceedings, with the following reason provided:

Dismiss the proceeding of the Applicants consistent with the orders in a related proceeding dated 5 March 2024 which was dismissed by VCAT (Details being R 2023/9924/00) included with this application. The related proceeding was for the bond which was order to be paid to the Respondents.

5 This matter was considered by the Tribunal at the outset of the hearing.

6 Application R2023/9924 was an application by the rental providers under section 419A of the Act for a bond repayment order in which they also claimed compensation of \$1,060 ('the bond application'). The details of that claim are as follows: '*Claiming a deduction from the bond for rent owing to the fixed term rental agreement expiry date in the amount of \$1060.00.*'

7 The bond application was determined by the Tribunal by Order on 5 March 2024. The Tribunal found '*The grounds relied upon for the application have not been proved,*' and ordered that '*The application be dismissed for the reasons given orally at the hearing,*' and that the Residential Rental Bond Authority pay the bond to the renters.



- 8 The Tribunal made a further Order in the bond application on 22 April 2024, correcting the Orders of 5 March 2024 to reflect that the residential rental providers were present at the hearing, and otherwise affirming the Orders of 5 March 2024, finding:

The application of the residential rental providers for a bond repayment order pursuant to s 419A of the Residential Tenancies Act 1997 was heard and determined by the Tribunal on 5 March 2024. The orders finalising the proceeding were made on that date.

Can a VCAT decision in one application stop the Tribunal from dealing with a second subsequent application involving the same subject matter?

- 9 A decision of VCAT is capable of giving rise to cause of action estoppel or res judicata - see *Morris -v- Riverwild Management Pty Ltd* [2011] VSCA 283. The rule is clearly explained by Zammit AsJ in *Commonwealth Bank of Australia -v- Davies* 2011 VSC 666:

25 The rule of res judicata is that no proceeding can be maintained on a “cause of action” upon which judgment has been entered.

26 The doctrine may apply where the causes of action are substantially the same. It not the legal form of a cause of action to which consideration should be directed but rather whether the controversy in the subsequent action, as a matter of substance, is the same as the controversy determined in the first proceeding.

- 10 The rule ensures that causes of action already the subject of a Tribunal decision are not reheard and redetermined.

Are the bond and compensation applications substantially the same cause of action?

- 11 The bond application and the compensation application are substantially the same cause of action. Both applications:
- concern the same rental providers, renters, rented premises and rental agreement.
 - claim the same compensation amount of \$1,060.
 - concern substantially the same controversy, that is, whether rent was owed by the renters to the end of a fixed term rental agreement.
- 12 In this respect I note that, whether compensation is sought by a rental provider from either the bond (by way of a bond repayment order under section 419A of the Act) or from the renters directly (by way of an order to pay compensation under section 472 of the Act), the effect of the order, if against the renters, is in substance the same. It is the renters who have paid the bond, and any order for payment to the rental providers from the bond is deducted from any monies that might otherwise be returned to the renters. It is the same, in effect, as ordering compensation in favour of the rental providers, to be paid by the renters.



- 13 The Tribunal has already determined and made final Orders about the controversy as to whether rent was owed by the renters to the end of a fixed term rental agreement in the bond application. The Tribunal has found the grounds for the application not to be proved. The application of the rental providers has been dismissed.
- 14 It is now not open to the rental providers to seek to re-open or have reheard the same controversy through the compensation application, which is in substance the same cause of action. The Orders in the bond application give rise to a cause of action estoppel, or invoke the rule of res judicata, and the compensation application cannot be maintained.
- 15 For these reasons, the compensation application is dismissed.

S Cohen
Member

