



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application: OPC; FF

Tenant's application: CNC

### **Introduction**

This hearing was scheduled to consider cross applications. The Landlord applied for an Order of Possession and to recover the cost of the filing fee from the Tenant.

The Tenant applied to cancel a Notice to End Tenancy for Cause issued April 30, 2014 (the "Notice").

The parties gave affirmed testimony at the Hearing.

It was determined that each party served with other with their Notice of Hearing documents and copies of their documentary evidence.

### **Issue to be Determined**

Is the Landlord entitled to an Order of Possession based on the Notice issued April 30, 2014?

### **Background and Evidence**

The parties had a Dispute Resolution Hearing on April 30, 2014 (the "Earlier Hearing"). The Earlier Hearing was scheduled to consider the Tenant's application to cancel two notices to end tenancy. A Decision was rendered on April 30, 2014. The Tenant's application to cancel the notice to end tenancy for cause was allowed. The Landlord withdrew her notice to end tenancy for rent. In addition, two other Orders were made.

The Landlord testified that her witnesses were not able to attend the Earlier Hearing because they were working. The Landlord stated that she thought she would file an Application for Dispute Resolution again and make sure that her witnesses were available to give testimony. The Landlord issued and served the Tenant with the Notice on April 30, 2014.

The Tenant acknowledged receiving the Notice four hours after the Earlier Hearing concluded. The Landlord stated that there were no further incidents between the end of the Earlier Hearing and the time that she issued the Notice; however, she stated that there have been incidents that occurred in May, 2014.

### **Analysis**

I must consider the facts as they were **at the time the Notice was issued**. At the time that the Notice was issued and served, no further incidents had occurred at the rental premises. I explained to the Landlord that she cannot attempt to appeal the Decision made at the Earlier Hearing by simply issuing a new notice to end tenancy based on the same facts as the previous notice to end tenancy.

As the parties were informed during the Hearing, I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier Decision, under the principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

I find that the Landlord's application cannot be revisited under the principle of *res judicata*.

### **Conclusion**

The Landlord's application is **dismissed**, as I find that the Landlord's Application has already been decided and cannot be revisited under the principle of *res judicata*.

The Landlord was strongly encouraged to seek advice regarding how to proceed if she wishes to issue another notice to end the tenancy.

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: June 13, 2014

