



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAWNESSY SQUARE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR O

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on July 18, 2014, to obtain a Monetary Order of \$8,424.94 for unpaid rent or utilities and for other reasons.

The hearing was conducted via teleconference and was attended by the Landlord, his Legal Counsel, the Tenant, and the Tenant's Legal Counsel. At the outset of the proceeding I instructed the Landlord's witness to leave the room until it was determined if this matter would proceed, pursuant to the *Residential Tenancy Branch Rules of Procedure*. The witness was not called back into the proceeding and did not provide testimony.

Issue(s) to be Decided

Does this matter fall within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

Upon review of the Landlord's application and each party's written submissions, I raised the issue of jurisdiction.

The Landlord affirmed that his application for \$8,424.94 monetary compensation stemmed directly from the Decision and Orders put forth by Arbitrator on March 19, 2002, plus a subsequent written agreement that he alleged the Tenant entered into on April 23, 2002. Copies of the original March 19, 2002 Decision, Monetary Order, and a document dated April 23, 2002, were provided in the Landlord's evidence.

The Tenant and his Legal Counsel argued that the Landlord's application was in their opinion, an attempt to appeal the original orders issued in the March 19, 2002, outside of the normal appeal process. They noted that despite the Landlord phrasing his

application as being a claim for unpaid rent, they argued that the claim for money stems directly from the previously issued orders, which have the force of a court order and stand.

In closing the Landlord's legal counsel argued that, in their view, the April 23, 2002 written agreement was an "amendment" to the tenancy agreement and therefore the Landlord could seek compensation for the nonpayment of rent.

During my instructions to advise the parties that the hearing was being concluded the Landlord questioned how long the original decision would be in effect if it was obtained through a lie.

Analysis

The undisputed evidence was the Landlord's application stemmed directly from the Decision and Orders put forth by Arbitrator on March 19, 2002, which awarded the Tenant a Monetary Order in the amount of \$1004.50 and ordered the Tenant to deduct \$38.18 from his rent, or any increased amount charged by the local cable provider for a service level equivalent to that provided by the landlord, for the duration of the tenancy.

Section 80 of the *Residential Tenancy Act* stipulates that an application for Review Consideration pertaining to a monetary order must be filed within 15 days of the date the decision or order were received.

There is no evidence before me that would indicate the Landlord made application for Review Consideration, within the required timeframes, relating to the original decision and orders of March 19, 2002.

Res judicata is a doctrine that prevents rehearing of claims and issues arising from the same cause of action, between the same parties and after a final judgment was previously issued on the merits of the case.

After review of foregoing, I find that there is no provision under the *Residential Tenancy Act* to allow this matter to be reconvened and heard by another arbitrator, as to do so would constitute res judicata.

The Landlord also relied up a written document/agreement that he alleged the Tenant entered into on April 23, 2002, and which he was of the opinion formed an amendment to the tenancy agreement.

Upon review of the April 23, 2002 document provided in the Landlord's evidence, I do not accept that this document could be considered an amendment to the original tenancy agreement. Although this document lists dates and dollar amounts it does not clearly state that it pertains directly to the terms of the original tenancy agreement. Furthermore, I note that this document includes the following statement:

This a final settelment both parties agree [sic]

A Monetary Order issued by the Director of the *Residential Tenancy Act*, is legally binding and is enforceable through the Province of British Columbia Small Claims Court and is enforceable as an Order of that Court.

Furthermore, an Arbitrator with the *Residential Tenancy Branch* does not have the authority or jurisdiction to enforce Monetary Orders or settlement agreements that may have been entered into outside of a dispute resolution proceeding. Therefore, I decline to hear these matters, for want of jurisdiction.

Conclusion

I HEREBY DECLINE to hear these matters, for want 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: October 31, 2014

Residential Tenancy Branch