



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, ERP, LRE, OPT, AAT, AS

Introduction

This was an application by a tenant for:

- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice for Cause dated March 30, 2015 pursuant to section 47;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order of possession of the rental unit pursuant to section 54;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both the applicant and respondent attended the hearing.

Preliminary Issues:

At the outset the respondent submitted that this matter had already been decided in a hearing on June 5, 2015. In that hearing the tenant brought the identical applications but

failed to attend. On June 5, 2015 the tenant's applications were dismissed and the landlord was granted an Order for Possession pursuant to the same Notice to End the Tenancy dated March 30, 2015.

The parties also had discussions about how the tenant may retrieve his possessions without breaching a restraining order.

Analysis

The tenant's applications brought in this application are identical to the ones brought previously and dismissed on June 5, 2015. There is a principle in law known as *res judicat* meaning that a party cannot relitigate a matter that has already been decided.

The following passages from the text: **Res Judicata**, Spencer-Bower and Turner, 2nd ed. (London: Butterworths, 1969) were expressly adopted and applied to circumstances analogous to those before me on this application in the decision of the Supreme Court of British Columbia In *London Life Insurance Company v. Zavitz et al*, [1990] S.C.B.C., Vancouver Registry No. C881705:

At page 359 of **Res Judicata** the required elements to support a plea of "former recovery" are set out:

- (i) That the former recovery relied upon was obtained by such a judgment as in law can be the subject of the plea.
- (ii) That the former judgment was in fact pronounced in the terms alleged;
- (iii) That the tribunal pronouncing the former judgment had competent jurisdiction in that behalf;
- (iv) That the former judgment was final;
- (v) That the Plaintiff, or prosecutor, is proceeding on the very same cause of action, or for the same offence, as was adjudicated upon by the former judgment;
- (vi) That the parties to the proceedings, or their privies, are the same as the parties to the former judgment, or their privies.

The learned author commented further at p. 380:

... where there is substantially only one cause of action, and it is a case, not of "splitting separable demands", but of splitting one demand into two quantitative parts, the plea [of **res judicta**] is sustained. In homely phrase, a party is entitled to swallow two separate cherries in successive gulps, but not to take two bites at

the same cherry. He cannot limit his claim to a part of one homogeneous whole, and treat the inseparable residue as available for future use, like the good spots in the curate's egg.

... Thus, where the omitted matter is a portion of the entire sum, or an item or parcel of the entire property, recoverable on a single cause of action, the judgment is a bar to any subsequent action in respect of such omitted matter.

Accordingly I find that as the tenant's applications herein are res judicata I must dismiss them all.

Settlement:

The parties settled an issue regarding the tenant's ability to retrieve his personal property and they have asked that I record the agreement pursuant to section 63(2) as follows:

1. The tenant may recover his personal property provided he gives the landlord 24 hour advance notice and provided that he does not attend in person unless he is escorted by the police or delegates an agent to attend in his stead.

Conclusion

I have dismissed all of the tenant's applications herein. The parties have agreed that the tenant may recover his personal property and I have recorded that agreement in my decision. There will not be any recovery of the filing fee herein.

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 28, 2015

Residential Tenancy Branch

