



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

The tenant and the landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were affirmed.

Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised of the conduct expected during the hearing and that interruptions by either party would not be tolerated. During the hearing, the tenant was cautioned on several occasions for continuing to interrupt myself and the landlord during the hearing.

Eventually, after several cautions to the tenant to cease interrupting or face being muted for the remainder of the hearing, the tenant interrupted again and was muted for the remainder of the hearing.

During the hearing, the tenant confirmed that he was forcibly evicted from the rental unit on September 2, 2015 by a bailiff. The landlord confirmed that an order of possession was issued based on a previous decision dated August 12, 2015, the file number of which has been included on the front page of this decision for ease of reference. The August 12, 2015 decision was dealt with by way of a Direct Request Proceeding, which resulted in the landlord being issued an order of possession and a monetary order. On August 26, 2015, the tenant’s application for a Review Consideration was denied and the August 12, 2015 decision was confirmed.

The parties were informed during the hearing, I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal 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.

With respect to res judicata, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In light of the above, I am unable to hear the tenant's application to cancel the 10 Day Notice as the tenancy has already ended by way of an order of possession being issued dated August 12, 2015, and that decision being confirmed once the tenant's application for Review Consideration was dismissed in a decision dated August 26, 2015. Furthermore, the order of possession has been enforced, and the tenant vacated the rental unit on September 2, 2015.

Conclusion

The tenant's application cannot be considered as res judicata applies.

The tenancy has already ended by way of a previous decision, the file number of which has been included on the front page of this decision for ease of reference.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2015

Residential Tenancy Branch