



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0896572 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Landlords' application: OPR; MNR; MNDC; MNSD; FF

Tenant's application: CNR

### **Introduction**

This Hearing was convened to consider cross applications. The Landlords seek an Order of Possession and Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks to cancel a Notice to End Tenancy for Unpaid Rent issued December 11, 2015.

The Landlords' agent and the Tenant gave affirmed testimony at the Hearing.

The Tenant stated that he was not served with the Landlords' Notice of Hearing documents. The Landlords' agent MG stated that the Tenant was served by the Landlord RK in her presence, but MG was unable to provide the date of service. I find that the Landlords have not provided sufficient evidence to prove service of the Notice of Hearing documents and therefore the Landlords' Application is dismissed with leave to reapply.

It was determined that the Tenant served the Landlords with his Notice of Hearing documents by depositing them into the mail slot at the Landlords' place of business on December 16, 2015.

### **Issues to be Decided**

- Should the Notice to End Tenancy be cancelled?

### **Background and Evidence**

The Tenant submitted that he paid rent for the month of December, 2015, and that therefore the Landlords have reinstated the tenancy.

Rent has not been paid for January or February, 2016.

The parties referred to a previous hearing which took place on December 4, 2015. The Decision with respect to that hearing was rendered on December 21, 2015 (the "Previous Decision"). MG submitted that the matter has already been decided.

### **Analysis**

The Previous Decision provides, in part:

#### **"Analysis**

The tenant did not dispute that he signed the form of mutual agreement to end a tenancy. The tenant did not submitted any convincing evidence to establish that the landlord resorted to some form of coercion or intimidation in order to secure his signature on the agreement to end the tenancy. The tenant applied to cancel a Notice to End Tenancy; there is no Notice that could be cancelled. I find that the tenant has not provided convincing reasons to show that the mutual agreement should be set aside. The tenant sought an order that the landlord comply with the *Residential Tenancy Act*, Regulation or tenancy agreement and he requested an order for possession of the rental unit. I find that the tenancy has ended effective October 31, 2015 pursuant to the mutual agreement to end tenancy and I find that he is not entitled to any of the other relief claimed in his application. The tenant's application is therefore dismissed without leave to reapply.

#### **Conclusion**

The tenant's application has been dismissed without leave to reapply. The tenancy has ended effective October 31, 2015. The landlord may apply for an order for possession if necessary."

I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the Previous 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.

In the Previous Decision, the arbitrator found that the tenancy ended on October 31, 2015, as a result of a mutual agreement to end the tenancy. I find insufficient evidence that the Landlords reinstated the tenancy. In fact, the Landlords made their Application for an Order of Possession on January 5, 2016. The Tenant has not paid rent for January or February, 2016, and therefore I do not find that the tenancy was reinstated.

Pursuant to the provisions of Section 62(3) and (4)(a) of the Act, I dismiss the Tenant's Application. Therefore, pursuant to the provisions of Section 55 of the Act, I find that the Landlords are entitled to an Order of Possession.

### **Conclusion**

The Landlords' Application is dismissed **with leave to reapply for a monetary award.**

The Tenant's application is dismissed.

I hereby provide the Landlords with an Order of Possession **effective 2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: February 05, 2016

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Residential Tenancy Branch

