



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNR FF

Introduction and Analysis

This hearing dealt with a Review Hearing of the tenant's original Application for Dispute Resolution, seeking to cancel a 10 Day Notice for Unpaid Rent or Utilities, and to recover the cost of the filing fee.

On June 23, 2016, an arbitrator issued a decision dismissing the tenant's application and granting the landlords and order of possession. The tenant applied for a Review Consideration of the June 23, 2016 decision and order, and on July 12, 2016 was granted a Review Hearing, which is a new hearing, based on new and relevant evidence which was comprised of Clerk's Notes that were found to be relevant and credible and would have had a material effect on the original decision. In the July 12, 2016 Review Consideration decision the arbitrator suspended the decision and order dated June 23, 2016 pending the conclusion of the Review Hearing. The arbitrator also wrote in the decision the following:

"...Each party must also serve the other and the Residential Tenancy Branch with any evidence that they intent to rely upon at the review hearing. The parties shall also provide to the Residential Tenancy Branch and to each other a copy of the entered Court Order from the June 24, 2015 hearing, or a copy of the transcripts of the hearing including the Reasons for Judgment..."

[reproduced as written]

The Review Hearing commenced this date on Friday, September 23, 2016 at 11:00 a.m. Pacific Time, and the applicant and respondents appeared.

The respondents confirmed that they received and reviewed the documentary evidence submitted by the applicant. The respondents also confirmed that they did not serve the

applicant or the Residential Tenancy Branch as ordered in the July 12, 2016 Review Consideration decision.

I have reviewed the Supreme Court Chambers Proceeding transcript of Master Caldwell dated June 24, 2015 which indicates on page 3, lines 36 to 38 counsel for the respondents indicated that the whole matter be set down for a summary trial. Furthermore, on page 4, lines 13 to 18 the comments of the Master lead me to believe that the matter is still before the Supreme Court and has yet to be concluded.

Therefore, given the above, **I set aside** the decision and order made on June 23, 2016 as I find that due to the matter being before the Supreme Court that the *Act* currently does not apply in this matter. Should the Supreme Court determine that the *Residential Tenancy Act* apply in this dispute, the parties are at liberty to reapply.

Conclusion

I set aside the decision and order of possession dated June 23, 2016.

This is matter is declined due to lack of jurisdiction.

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 23, 2016

Residential Tenancy Branch