



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF, OLC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the tenants' application to:

- Cancel a landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 of the *Act*;
- Direct the landlord to comply with the *Act* pursuant to section 62 of the *Act*; and
- Recover the filing fee from the landlord pursuant to section 72 of the *Act*.

At the outset of the hearing, I explained to the female tenant, ST, that I had reservations surrounding the application before me. I stated that this matter had already been heard by the *Residential Tenancy Branch* on two previous occasions, a final and binding order had been issued, and a review application had been considered and denied by an arbitrator.

Specifically, on January 23, 2017, an arbitrator ruled on the issue concerning an application to cancel a notice to end tenancy for unpaid rent or utilities. Following this hearing a 2 Day Order of Possession was granted to the landlord.

The legal principle of *res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

The tenants' application is dismissed as I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the *Act*.

As the tenants were unsuccessful in their application, they must bear the cost of their own filing fee.

Conclusion

As I am without jurisdiction to consider this matter, the tenants' application is dismissed without leave to reapply. The final and binding decision issued on January 25, 2017 pertaining to this tenancy remains in effect.

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 8, 2017

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Residential Tenancy Branch