



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF, CNC

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord applied for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties confirmed receipt of one another's application for dispute resolution. Pursuant to section 89 of the *Act*, I find that the parties were duly served with their respective applications. The landlord said that he served his evidence package, which consists of photographs, a monetary worksheet and an Amendment to the Application for Dispute Resolution, on the tenant by regular mail on or about September 5th. The tenant said that he did not receive the landlord's evidence package.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a monetary order as claimed?

Is either party entitled to recover the filing fee for their application from the other?

Preliminary Issue – Res Judicata

There was a previous hearing regarding this tenancy under the file number on the first page of this decision on September 27, 2017. In the decision made for that hearing dated September 28, 2017 another arbitrator issued an Order of Possession to the landlord.

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. In the previous hearing another arbitrator made a conclusive determination regarding this tenancy and issued an Order of Possession to the landlord. I find that I have no jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the *Act*. Accordingly I dismiss the portion of the landlord and tenant's applications dealing with the tenancy.

Preliminary Issue – Landlord's Monetary Claim

The landlord included in the evidentiary package a completed Amendment to an Application for Dispute Resolution form (the "Amendment"). The Amendment is not filed with the Residential Tenancy Branch.

Rules of Procedure 4.1 provides that an applicant may amend a claim by completing an Amendment form and filing the completed Amendment with the Branch. I find that the landlord has not filed the completed Amendment in accordance with the Rules.

Even if the Amendment had been filed in accordance with the *Act*, the landlord's wife testified that she served the Amendment as part of the evidence package by regular mail. Section 89(1) of the *Act* sets out the ways in which an application for dispute resolution, which includes an amendment adding a monetary claim, must be served. Regular mail is not a method permitted under the *Act*. Therefore, I find that the landlord's monetary claim was not filed in accordance with the Rules and even if it were

it was not served on the tenant in accordance with the *Act*, I dismiss this portion of the application with leave to reapply.

Conclusion

The tenant's application is dismissed.

The portion of the landlord's application seeking an Order of Possession is dismissed.

The portion of the landlord's application seeking a Monetary Order is dismissed with leave to reapply.

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: October 4, 2017

Residential Tenancy Branch