



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0752401 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR OPB MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, filed September 14, 2017. A participatory hearing, via teleconference, was held on November 29, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- an order of possession because the Tenant has breached an agreement with the Landlord;
- a monetary order for unpaid rent or utilities;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord's agent (the "Agent") attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing.

The Agent testified that he personally served the Tenant with a copy of the Application for Dispute Resolution, his evidence, and the Notice of Hearing on September 20, 2017. I find the Tenant received this package on that day.

Preliminary and Procedural Matters

The Agent testified that he does not need an order of possession, given that he and the Tenant have reached an agreement regarding the end of the tenancy at a previous hearing. As such, he does not require me to consider the first two grounds above. I have amended his application accordingly and will not be addressing either of those grounds any further.

During the hearing, the Agent stated that he had a previous hearing, on October 5, 2017, with another arbitrator. The Agent stated that he reached a settlement agreement in that hearing. After reviewing the previous settlement agreement, including the basis for that hearing and the ground each party applied on, I note that the previous hearing dealt with applications from both the landlord and the tenant. The landlord applied for:

- an Order of Possession for Unpaid Rent pursuant to section 55; and,
- a monetary order for unpaid rent pursuant to section 67.

The tenant applied for:

- an order regarding a disputed additional rent increase pursuant to section 43.

Both parties attended the previous hearing on October 5, 2017, and were given an opportunity to be heard, to testify and to make submissions. As part of the Landlord's submissions for that hearing, he indicated that he wanted a monetary order for partially unpaid rent for July, August and September of 2017.

In the hearing before me, held on November 29, 2017, the same issues were identified and the Agent requested compensation for the same months he identified in his application that was before the previous arbitrator.

I find it important to note that, in that settlement agreement on October 5, 2017, both parties agreed that all aspects of their dispute were settled. This was explicitly indicated in that decision, as follows:

*These terms [of the settlement agreement] comprise the **full and final settlement of all aspects of this dispute for both parties.***

[.....]

*The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this **full and final settlement of this matter.***

[My emphasis added]

Further, I also must adhere to the principle of *res judicata*, which 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.

Accordingly, based on the legal principle of *res judicata*, and the settlement agreement made between the parties, I decline to hear the issues presented by the Agent at this hearing, given they were raised and settled in the previous hearing. Previous decision file numbers have been included on the cover page of this Decision for ease of reference.

I find that the Agent's application is dismissed, without 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: November 30, 2017

Residential Tenancy Branch