



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with a landlords' Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") to obtain an order of possession for unpaid rent, for a monetary order for unpaid rent, and to recover the cost of the filing fee.

Landlord M.A. ("landlord") and tenant H.D. ("tenant") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed receiving the landlords' documentary evidence and that the tenants had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that the tenant did not submit any documentary evidence in response to the landlords' application. Based on the above, I find there are no service issues.

Preliminary and Procedural Matters

At the start of the hearing, the landlord confirmed that the tenants vacated the rental unit on November 29, 2017 since filing this application and as a result, an order of possession was no longer required. As a result, I have not considered the landlords' request for an order of possession.

In addition to the above, the parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Further to the above, the parties confirmed the file number of a previous decision dated November 22, 2017, the file number of which has been included on the cover page of this decision for ease of reference ("previous decision"). In that previous decision, the tenant's application to cancel a 2 Month Notice was dismissed and the arbitrator made a finding that the tenant was entitled to one month compensation for having been issued a 2 Month Notice. The parties were advised that due to that decision, I am unable to consider the same November 2017 rent as an arbitrator has already determine that the last month of rent, November 2017, was not due as compensation for the 2 Month Notice issued by the landlords.

I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal 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.

With respect to res judicata, the courts have found that:

"...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In light of the above, I have not re-heard the matter of November 2017 rent as that has already been dealt with by the previous decision referred to on the cover page of this decision.

As a result, I find the landlords' application must be dismissed as it is now moot and that res judicata applies given that November 2017 rent of \$850.00 has already been decided upon in the previous decision.

The landlord claims that the tenancy ended based on the 10 Day Notice which I will discuss below. The landlord also stated that had he had a written tenancy agreement his application based on the 10 Day Notice would have been heard sooner.

Analysis

Based on the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

I disagree with the landlord that the tenancy based on the 10 Day Notice as a previous decision dated November 22, 2017 granted an order of possession for November 30, 2017 at 1:00 p.m., confirmed the 2 Month Notice to be valid and that the last month of rent was not owed by the tenants as compensation for the 2 Month Notice to End Tenancy for Landlord's Use of Property.

I also find the landlord breached sections 12 and 13 of the *Act* by failing to have a written tenancy agreement that met the requirements of section 13 of the *Act*. Sections 12 and 13 state:

Tenancy agreements include the standard terms

12 The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;

- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[Reproduced as written]

I also explained to the landlord that he is unable to rely on a Direct Request process if he fails to comply with the *Act* and have the required documents such as a written tenancy agreement that complies with sections 12 and 13 of the *Act*. Therefore, I **caution** the landlord to comply with sections 12 and 13 of the *Act* in the future.

Conclusion

The landlord has claimed for unpaid November 2017 rent of \$850.00 and I find that November 2017 rent has already been addressed in the previous decision based on the legal principle of *res judicata*.

Therefore, I dismiss the landlord's application without leave to reapply as this application is now moot given that November 2017 has already been determined as compensation to the tenants pursuant to the 2 Month Notice issued by the landlords and as described above and in the previous decision.. The file number of that previous decision is on the cover page of this decision.

I do not grant the landlord the recovery of the filing fee.

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: December 22, 2017

Residential Tenancy Branch