



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MT, OLC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent and for more time to do so. The tenant also applied for an order directing the landlord to comply with the *Act*.

Both parties attended the hearing and had opportunity to be heard.

At the start of the hearing, the landlord informed me that on January 17, 2018, he had served the tenant with a notice to end tenancy for non-payment of rent and on January 23, 2018, he had applied for an order of possession and a monetary order for unpaid rent. In a decision dated February 01, 2018, the landlord's application was granted.

The landlord informed me that these matters that the tenant has applied for were the subject of the application made by him on January 23, 2018 which resulted in the decision dated February 01, 2018. The landlord provided me with a file number which is recorded on the first page of this decision.

The landlord stated that pursuant to the decision dated February 01, 2018, he had in his possession, an order of possession and a monetary order for unpaid rent. He stated that he was in the process of hiring a bailiff to move the tenant out.

On January 29, 2018, the tenant made this application to dispute the same notice to end tenancy. The tenant amended her application on February 15, 2018 to include a dispute against a second notice to end tenancy dated February 14, 2018.

Issues to be decided

Did the decision dated February 01, 2018 deal with the same notice to end tenancy?
Did the parties enter into a new tenancy agreement? Is the tenant's application *res judicata*?

Background and Evidence

The tenancy started on February 15, 2016 for a fixed term of two years ending on February 14, 2018. The monthly rent was \$3,000.00 for the first year and \$3,100.00 for the second year and it was payable on 15th of each month. On January 17, 2018, the tenant was served with a ten day notice to end tenancy for non-payment of rent in the amount of \$7,720.00. The notice was dated January 10, 2018.

On January 23, 2018, the landlord made an application for dispute resolution by direct request. In a decision dated February 01, 2018, the landlord was granted an order of possession and a monetary order for unpaid rent.

On February 05, 2018, the tenant applied for a review of the decision dated February 01, 2018 which was based on the notice to end tenancy dated January 10, 2018 and served on the tenant on January 17, 2018. In a decision dated February 13, 2018, the tenant's application for review consideration was dismissed

I further note that, on January 29, 2018, the tenant made an application to dispute the same notice to end tenancy dated January 10, 2018 which was served to her on January 17, 2018..The tenant came into the Residential Tenancy Branch Office on February 15, 2018 and amended her application to include a dispute of a second notice to end tenancy dated February 14, 2018.

During the hearing the tenant stated that she had entered into a second tenancy agreement with the landlord dated January 27, 2018 for a tenancy that was due to start on February 15, 2018. The landlord was firm in his denial of having entered into a second tenancy agreement. The copy of the agreement filed into evidence by the tenant did not contain the signature of the landlord.

Analysis

Based on the documentary evidence, testimony of the parties and the decisions dated February 01, 2018 and February 13, 2018, I find that the landlord served the tenant with a notice to end tenancy for unpaid rent on January 17, 2018. This notice was upheld and in a decision dated February 01, 2018, the landlord was granted an order of possession and a monetary order for unpaid rent.

On January 29, 2018, the tenant made an application to dispute the same notice to end tenancy which is the subject of today's hearing.

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the above, I find that the notice to end tenancy dated January 10, 2018 has already been dealt with by a direct request application made by the landlord and the tenancy has ended pursuant to an order of possession granted to the landlord in the decision dated February 01, 2018. In response to the tenant's application for review consideration, this decision dated February 01, 2018 was confirmed in a decision dated February 13, 2018.

Accordingly the tenancy has ended and based on the principles of *res judicata*, I must dismiss the tenant's application to dispute the notice dated January 10, 2018. In addition since the tenancy has ended, the notice dated February 14, 2018 is moot.

Conclusion

The tenant's application is dismissed in its entirety.

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: March 29, 2018

Residential Tenancy Branch