



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDCT MNSD RPP

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the tenants under the *Residential Tenancy Act* (“Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 16, 2017 (“10 Day Notice”), for a monetary claim of \$10,600.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of the tenants’ security deposit and/or pet damage deposit, and for the return of the tenants’ personal property.

The tenants, a tenant agent (“agent”), the landlord and the spouse of the landlord attended the teleconference hearing. At the start of the hearing, the parties agreed that the tenants had since vacated the rental unit and that the 10 Day Notice had been previously decided upon in a previous hearing. The file number of that previous decision (“previous decision”) has been included on the cover page of this decision for ease of reference.

Prior to this hearing, the tenants amended their application to include cancelling the 10 Day Notice which I will deal with below.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on their application, the most urgent of which is the application to set aside the 10 Day Notice. It was also the reason the tenants were granted an expedited hearing as matters related to an order of possession, emergency repairs for health and safety reasons or to end a tenancy early due to a health or safety concern are granted an expedited hearing versus monetary claims which are booked further in the future. I find that not all the claims on the tenants’

application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice at this proceeding. Therefore, I dismissed the remainder of the tenants' application **with leave to reapply**.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Background and Evidence

At the outset of the hearing, the tenants confirmed that they are no longer occupying the rental unit and that the 10 Day Notice has already been dealt with by way of the previous decision in which an order of possession was granted to the landlord.

Analysis

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

During the hearing, the previous decision was reviewed and the parties were informed that 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 am unable to hear this amended application by the tenants to cancel a 10 Day Notice that was already upheld in the previous decision and in which an order of possession was already granted. Given the above, I dismiss the tenants' application without leave to reapply as the tenancy has already ended and this matter has already been previously decided upon in the previous decision dated December 27, 2017.

Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply as the tenancy has already ended and the 10 Day Notice has already been dealt with by way of the December 27, 2017 previous decision. The remainder of the tenants' claim is dismissed with leave to reapply. I note that this decision does not extend any applicable timelines under the *Act*.

The tenants are reminded that amending a monetary claim with an application to cancel a 10 Day Notice when the tenancy has already ended or the 10 Day Notice has already been considered and decided upon in a previous decision does not expedite a monetary claim and/or bypass the scheduling time of monetary claims.

This decision is final and binding on the parties, except as 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: June 4, 2018

Residential Tenancy Branch