



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for unpaid rent, pursuant to sections 46 and 55.

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

The landlord testified that she served the tenant the notice of dispute resolution package by registered mail on June 5, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the dispute resolution package on June 11, 2018. I find that the tenant was served with this package on June 11, 2018, in accordance with section 89 of the *Act*.

### Preliminary Issue- Jurisdiction

The respondent submitted into evidence a previous decision dated June 5, 2018 between the same parties as this hearing and regarding the same residential address. A finding was made in that decision that the relationship between the parties lacked the elements of a tenancy agreement and jurisdiction was declined as it was determined that the occupant might be a beneficial owner of the property in question.

In this application both parties confirmed that both parties remained the same and that this dispute was a result of the same relationship outlined in the June 5, 2018 decision. Neither party has filed for review of the June 5, 2018 decision. In this case both parties are in agreement that the dispute arises out of the same relationship determined to be a family dispute in the June 5, 2018 decision.

*Res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

The previous Arbitrator made a finding declining jurisdiction as this was a family matter and not a matter involving a landlord/tenant relationship. I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

The tenant's application is dismissed without leave to reapply for lack of jurisdiction.

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: July 19, 2018

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Residential Tenancy Branch