



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC,

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenants and their advocate attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants testified that they served the landlord with the notice of dispute resolution application via registered mail on November 20, 2018. A tracking number and or receipt were not entered into evidence. Based on the tenants' testimony I find that the landlord was served with the tenants' notice of dispute resolution application on November 25, 2018, 5 days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Res Judicata

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.

The tenants testified that they moved out of the subject rental property on November 30, 2018 after the landlord received an Order of Possession dated November 20, 2018, through a Direct Request Proceeding, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”). The tenants applied for review consideration, alleging that the landlord entered into evidence a fraudulent proof of service document, and that they did not receive the 10 Day Notice on the date stated by the landlord. The tenants’ application for review consideration was dismissed in a review consideration decision dated November 28, 2018.

The tenants’ current application seeks to re-hear the tenants’ claims regarding the 10 Day Notice. I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

The tenants’ 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: January 03, 2019

Residential Tenancy Branch