Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF, LRE

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of April 23, 2019 pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they had received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Am I able to address any of the issues raised by the tenant in their application for dispute resolution? If so, should the landlord's 10 Day Notice be cancelled? Should any other orders be issued with respect to the tenant's application.

Background and Evidence - Previous Hearing and Decision Regarding this Tenancy

On April 23, 2019, another appointed pursuant to the *Act* considered applications from both the landlord and the tenant (see RTB File Numbers identified above). In their April 23, 2019 decision (the previous decision), the presiding Arbitrator described their applications as follows:

This hearing dealt with applications from both the landlord and the tenants under the Residential Tenancy Act (the Act). The landlord applied for:

- *an order of possession pursuant to section 55;*
- *a monetary order for unpaid rent pursuant to section 67;*
- *authorization to recover the filing fee for this application from the tenant pursuant to section 72.*

The tenant applied for:

- *cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;*
- *a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;*

Although the parties to that hearing referenced multiple 10 Day Notices, specific mention was included in the previous decision to 10 Day Notices issued in September 2018 and dated February 27, 2018, which was supposed to have been February 27, 2019 and provided to the tenant on March 1, 2019. The previous Arbitrator set aside the 10 Day Notice dated February 1, 2018, but issued to the tenant on March 1, 2019 for the following reasons:

...Section 52 of the Act speaks to Form and Content in order for a landlord's notice to end tenancy to be effective. Both parties confirmed that the landlord served a 10 Day Notice for Unpaid Rent dated February 27, 2018. The landlord confirmed that this was an error as was to be dated February 27, 2019. Both parties confirmed that the landlord failed to complete the details of the notice by providing the details of unpaid rent as per the notice and when it was due. The tenant applied for dispute of the notice not knowing how much was owed. On this basis, I find that the 10 Day Notice dated February 27, 2018 (which was supposed to be February 27, 2019) is cancelled and is considered ineffective as the tenant was unable to properly respond to the landlord's

notice as no details of unpaid rent were provided. The tenant's application to cancel the 10 Day Notice is granted...

The previous Arbitrator also considered a mutual agreement to end tenancy signed by both parties on September 16, 2018, in which the parties agreed that this tenancy was to end on March 4, 2019. In the previous decision, the Arbitrator included the following portions of the mutual agreement signed by the parties:

> *Between the tenant, F.G.C. and the landlord, J.F. on sep 16, 2018 to resolve the "One Month Notice to End Tenancy for Cause" by Oct 04, 2018 from the Landlord. Both agree below:*
>
> 1) *The tenant must move out on March 4, 2019.*
> 2) *The new agreement for the rent will be $1000.00 per month to start Oct 4 2018 to Mar 4 2019.*
> 3) *The tenant will pay $200 owned after the Landlord fix the roof and gutter.*
> 4) *Cancel the notice by the Landlord.*

In the previous decision, the Arbitrator considered the tenant's assertion that they were forced to sign the mutual agreement. The previous Arbitrator made a final and binding decision that the mutual agreement was valid and constituted a legal way for the landlord to seek an end to this tenancy. The previous Arbitrator issued a 2 Day Order of Possession in the landlord's favour.

As I noted repeatedly at the current hearing, I have no legal authority to revise, modify or change in any way the final and binding decision of the previous Arbitrator issued on April 23, 2019.

Background and Evidence - Tenant's Current Application

The tenant's current application was initially to cancel the 10 Day Notice issued to the tenant on April 23, 2019. This 10 Day Notice appears to have been issued to the tenant prior to the parties' receipt of the previous Arbitrator's decision of the same day. The tenant applied for dispute resolution to cancel the 10 Day Notice on May 2, 2019, likely after they had already received the previous Arbitrator's decision by email.

After receiving the previous Arbitrator's decision, the landlord obtained a Writ of Possession from the Supreme Court of British Columbia and enlisted the services of a

Court Appointed Bailiff to implement the 2 Day Order of Possession attached to the previous Arbitrator's decision.

At this hearing, the tenant said that the Court Appointed Bailiff evicted them on June 4, 2019. The tenant said that almost all of their possessions were seized on that date and held by the Bailiff. At the hearing, the tenant asked for consideration of their changed circumstances that had occurred since they applied for dispute resolution on May 2, 2019, as they believed that the previous hearing had not allowed them a proper opportunity to present their position with respect to the landlord's attempts to end this tenancy. The tenant said that their lack of access to their belongings impeded their ability to present their position with respect to their current application. The tenant said that they were now staying with friends as they had been rendered homeless by the Bailiff's actions on the landlord's behalf.

The tenant also wanted to discuss the amount of unpaid rent identified as owing on the 10 Day Notice of April 23, 2019, $2,400.00. The landlord confirmed that they have not made any application to recover the amount of unpaid rent identified as owing on the 10 Day Notice of April 23, 2019. As there is no evidence that the landlord has made any application for a monetary award, and the tenant made no mention of this matter in their application, the matter of the recovery of rent owing is not properly before me and I have not considered this issue.

Analysis

As I noted at the hearing, my jurisdiction in this matter is limited to the situation as it existed at the time of the tenant's application for dispute resolution on May 2, 2019. Any changes in the tenant's circumstances that have occurred after that date were not part of the tenant's application. It would be unfair to consider circumstances that have emerged only after the tenant submitted their application for dispute resolution, circumstances that the landlord was not aware would be part of this hearing.

Many of these changed circumstances result from the landlord's actions in obtaining a Writ from the Supreme Court of British Columbia to give legal effect to the 2 Day Order of Possession issued by the previous Arbitrator, and in securing the services of a Court Appointed Bailiff. As I attempted to explain to the tenant at the hearing, the *Act* does not provide arbitrators with any powers with respect to Court Appointed Bailiff's implementation of Writs of Possession issued by the Supreme Court of British Columbia.

Once a final and binding decision is issued by an Arbitrator appointed pursuant to the *Act*, the legal principle of *res judicata* prevents any interference with that decision by another Arbitrator. The principle of *res judicata* establishes that when a court of competent jurisdiction has entered a final judgement on the merits of a cause of action, the parties to the suit are bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. A final judgment on the merits bars further claims by the same parties based on the same cause of action.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defence to defeat the enforcement of an earlier judgment. It also precludes relitigation 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.

Since the previous decision ended this tenancy on the basis of the mutual agreement to end tenancy, there was no need to consider the 10 Day Notice issued that same date. All of the other issues identified in the tenant's application could only have been successful had this tenancy continued. By May 2, 2019, the tenant had already received a final and binding decision that this tenancy ended on March 4, 2019, in accordance with the terms of the mutual agreement to end this tenancy. As the tenant refused to abide by the requirement in the previous decision that they vacate the rental unit within two days of receiving the Order of Possession, the landlord had to incur further delay in having to obtain a Writ of Possession from the Supreme Court of British Columbia and to secure the services of a Court Appointed Bailiff to enforce the 2 Day Order of Possession and Writ of Possession. While this process had not been completed until June 4, 2019, these actions were a direct result of the tenant's refusal to abide by the decision of the previous Arbitrator.

As this tenancy has already ended and there was no need for the landlord to pursue an end to this tenancy on the basis of the 10 Day Notice of April 23, 2019, I set aside the landlord's 10 Day Notice of that date. Although the 10 Day Notice has no legal effect, I emphasize that this has **no** impact on the Order of Possession issued by the previous Arbitrator granted on the basis of the mutual agreement to end tenancy. I have no legal authority to revisit issues that were before the previous Arbitrator, including the previous Arbitrator's decision that this tenancy has ended, entitling the landlord to a 2 Day Order of Possession.

I dismiss the remainder of the tenant's application because this tenancy has ended. All of the potential outcomes that could be provided would be predicated on a tenancy that was still in force.

Conclusion

The landlord's 10 Day Notice of April 23, 2019 is set aside and of no continuing force or effect.

I dismiss the remainder of the tenant's application as this tenancy has already ended as a result of the previous decision issued on April 23, 2019, and the 2 Day Order of Possession attached to that decision.

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: June 14, 2019

Residential Tenancy Branch