



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OLC, LRE

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order cancelling the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, and for an order suspending or setting conditions on the landlord's right to enter the rental unit.

The tenants attended the telephone conference call hearing; the landlord did not attend.

The tenant testified that they served the landlord with their Application for Dispute Resolution and Notice of Hearing by registered mail. The tenants provided the tracking number of the Canada Post mail, which is reflected on the style of cause page of this Decision. The tenant submitted that the registered mail was sent to the landlord's address listed on the Notice and that it was returned to them, marked "unclaimed".

Based upon the submissions of the tenants, I accept the landlord was served notice of this hearing and the tenant's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

Preliminary and Procedural Matters

I informed the tenants at the beginning of the hearing that the portion of their application dealing with a request for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, and for an order suspending or setting conditions on the landlord's right to

enter the rental unit is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and dismissed that portion, **with leave to reapply**.

Thereafter, when discussing other issues, such as the correct address of the rental unit at dispute, the tenants said that there were two addresses involved, both owned by the landlord. Also, during this discussion, the tenants mentioned they had filed a review consideration application for another application for dispute resolution, also regarding the current rental unit, or at least one of the addresses.

The tenants said that they did not attend that hearing due to technical issues, which led to their review consideration application.

I asked the tenant for that file number, and upon review of that dispute, I discovered that the tenants had previously filed an application in dispute of the same Notice, which was scheduled at the same time as the landlord's application for dispute resolution, as a cross application. The Notice was dated July 27, 2019, and listed unpaid rent of \$2,720.00 owed as of June 1, 2019.

The landlord's application dealt with the landlord's request for an order of possession for the rental unit due to a One Month Notice to End Tenancy for Cause, and other matters.

The hearing on the parties' cross applications was held on August 19, 2019, before another arbitrator, which resulted in the landlord's application being granted and the tenants' application being dismissed, as they failed to attend the hearing.

In the Decision of August 19, 2019, the other arbitrator granted the landlord an order of possession of the rental unit, effective in 2 days.

I then explained to the tenants I would be unable to proceed with their application seeking cancellation of the Notice, as I find that this matter has previously been decided upon by another Arbitrator in the August 19, 2019, Decision.

I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*.

I therefore dismiss the tenants request seeking cancellation of the Notice dated July 27, 2019, without leave to reapply.

Conclusion

At the beginning of the hearing, the tenants' application was severed and the portion of their application dealing with a request for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, and for an order suspending or setting conditions on the landlord's right to enter the rental unit, with leave to reapply.

The tenants' application seeking cancellation of the 10 Day Notice is dismissed, without leave to reapply, for the reasons above.

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: August 26, 2019

Residential Tenancy Branch