



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S OPC**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended. The tenant attended with the translator TC ("the tenant"). The tenant acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution except for certain evidence the landlord testified was served by posting on the tenant's door on November 12, 2019.

The hearing process was explained, and an opportunity was given to ask questions about the hearing process. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. Both parties were affirmed.

Preliminary Issue

At the outset of the hearing, the tenant objected to the hearing stating that the One Month Notice had previously been determined by an arbitrator to be cancelled and of no force or effect.

In support of this assertion, the tenant referenced a previous Decision dated November 8, 2019, the case file number for which appears on the first page.

Preliminary Issue(s) to be Decided

Has the One Month Notice been cancelled and is it of no force and effect?

Background and Evidence

In a 46-minute highly contentious hearing, the parties provided background information. During the hearing, the parties were antagonistic. The tenant became angry, yelled swear words and hung up. However, the tenant reconnected to the call within a few minutes, was warned to refrain from any similar outburst, and the proceeding continued.

The landlord served the One Month Notice upon the tenant by posting to the tenant's door on September 26, 2019. The tenant acknowledged receipt. A copy of the Notice was submitted.

The tenant previously brought an application to cancel the One Month Notice. The application was heard, and a Decision entered on November 8, 2019 in a file referenced on the first page.

The previous decision followed a contested hearing and stated in part as follows:

For the forgoing reasons, I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the Act.

The landlord testified that he subsequently served the tenant with additional material. The landlord did not issue a new One Month Notice. The current hearing is regarding the same One Month Notice.

Analysis

The legal principle of *res judicata* prevents a party from pursuing a claim that already has been decided. 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 issue was contested and decided in the first action.

The One Month Notice was previously determined to be of no force and effect. In a past Decision, the arbitrator cancelled the 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 landlord's application is dismissed as I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the *Act*.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: November 28, 2019

Residential Tenancy Branch