



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for an order to provide services or facilities required by the tenancy agreement or law.

The Tenants, J.M. and C.M., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlords.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that they served the Landlords with the Notice of Hearing documents in person on November 24, 2019. The Tenants said they served the Landlords with the Amendment in person on December 3, 2019. The Tenants said they served the Landlord with other documentary evidence in person on December 31, 2019. I find that the Landlords were deemed served with the Notice of Hearing documents in accordance with the Act.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in their Application documents, and confirmed their address at the outset of the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders

sent to the appropriate Party.

The Tenants filed an Amendment to their Application, stating that their monetary claim had changed. However, the Tenants did not apply for a monetary order for damage or compensation under the Act initially; therefore, they cannot modify or change a claim for which they have not applied. Accordingly, the Tenants' submissions in this regard are dismissed with leave to reapply.

Res Judicata

In reviewing the Tenants' Application, I note that they applied for dispute resolution on July 19, 2019, and obtained a Decision on September 24, 2019, by another RTB arbitrator. The Tenants' Application before me is for the same claims as those of the July 19, 2019 application and accompanying decision of September 24, 2019.

Black's Law Dictionary defines *res judicata*, in part as follows:

A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

I note the Landlord applied for a review consideration of that decision; however, the Landlord's application for review was rejected, and the September 24, 2019 decision confirmed. As the issues for which the Tenants applied have already been decided, I am without jurisdiction to hear the same issues again.

Conclusion

As the issues of this Application have been previously decided by an arbitrator, and thus the principle of *res judicata* applies, I hereby dismiss this Application on those matters without leave to reapply.

The Tenants made submissions, as if they had applied for a Monetary Order, but they have not. Accordingly, their monetary submissions are dismissed with leave to reapply for dispute resolution for a Monetary Order against the Landlord.

The Tenants are cautioned to ensure they serve the Landlord with any future applications and documentary submissions not less than 14 days prior to any hearing scheduled, pursuant to RTB Rule of Procedure 2.11.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 22, 2020

Residential Tenancy Branch