



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

**A matter regarding SOMERSET MANOR
and [tenant name suppressed to protect privacy]**

DECISION

Dispute Codes **CNC FFT**

Introduction

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

An order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47; and

Authorization to recover the filing fees from the landlord pursuant to section 72.

Both the landlord and the tenant attended the hearing. The landlord was represented by property manager, PB ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue

At the commencement of the hearing, the landlord advised me that the tenant's co-tenant/roommate filed an Application for Dispute Resolution to dispute the exact same One Month Notice to End Tenancy for Cause issued on October 30, 2019. The landlord advised me that there was a dispute resolution hearing that took place at 9:30 a.m. on the same day as this hearing. The file number for the previous hearing is recorded on the cover page of this decision.

I took the opportunity to determine if a decision had been made on that file and discovered the director's delegate made the following finding:

Based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the grounds for issuing the One Month Notice on the

grounds of significant interference and unreasonable disturbance as explained below...

...

Therefore, as I do not find that the landlord has proven the grounds for ending this tenancy, the tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

As such, the tenancy will continue until ended in accordance with the Act.

The principle of *res judicata* prevents an applicant from pursuing a claim that already has been decided and also prevents a respondent 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.

As the director's delegate has already determined the One Month Notice To End Tenancy for Cause issued on October 30, 2019 is cancelled and of no further force or effect, I am bound by *res judicata* from allowing the parties to re-litigate the claim. The tenant's application is dismissed without leave to reapply.

Conclusion

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

In accordance with the decision issued on January 03, 2020 in the aforementioned file, the tenancy will continue until ended in accordance with the Act.

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, 2020

Residential Tenancy Branch