



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, LRE

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- an Order that the landlord's right to enter is suspended or restricted, pursuant to section 70.

The respondent submitted into evidence a previous decision dated December 16, 2019 between the same parties as this hearing and regarding the same residential address. The arbitrator in that hearing found that the parties do not have a landlord and tenant relationship under the *Act*. The tenant's application for dispute resolution was dismissed without leave to reapply for lack of jurisdiction.

The respondent submitted into evidence a Review Consideration decision dated January 14, 2020 in which the tenant's application for review consideration was dismissed.

In this application both parties confirmed that both parties remained the same and the subject rental address remained the same as that outlined in the December 16, 2019 decision.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant 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. Former adjudication is analogous to the criminal law concept of double jeopardy.

The previous Arbitrator made a finding declining jurisdiction. I therefore find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. Jurisdiction has already been refused, and cannot be reargued.

The tenant's application is dismissed without leave to reapply for lack of jurisdiction.

I also note that the tenant testified that he started an action in the Supreme Court of British Columbia regarding the property under dispute and entered into evidence an affidavit made in the course of those proceedings. The tenant initially testified that this matter was ongoing and later changed his submissions to state that the matter was not ongoing. The landlord testified that the tenant's Supreme Court case was not yet resolved and has been adjourned.

Section 58(2)(c) of the *Act* states that except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless the dispute is linked substantially to a matter that is before the Supreme Court.

I find that this matter is substantially linked to a matter before the Supreme Court and that I therefore do not have jurisdiction to hear it.

Conclusion

The application has been refused due to lack of jurisdiction under 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: February 18, 2020

Residential Tenancy Branch