



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

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

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both parties were represented by advocates.

Both parties agree that the tenant was served with the landlord's application for dispute resolution via registered mail. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Res Judicata

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.

At the beginning of the hearing the tenant's advocate submitted that this matter is *res judicata* because the landlord filed the exact same application for dispute resolution on

May 14, 2020 and that a hearing was conducted on May 26, 2020. The tenant's advocate submitted that the landlord and or his agent did not attend that hearing and the landlord's application for dispute resolution was dismissed without leave to reapply. The tenant's advocate provided the file number for the previous decision. The file number is located on the cover page of this decision.

The landlord's agent testified that he was not aware of a previous hearing and had no knowledge of two separate applications being made.

The tenant testified that he was served with the landlord's May 14, 2020 application for dispute resolution by posting, prior to the first hearing, and that is how he knew to attend.

I informed both parties in the hearing that I would investigate the matter and that if there was an administrative error, a new hearing would be scheduled, but that if no administrative error was made, the landlord's application would be dismissed without leave to reapply for lack of jurisdiction to re-hear the matter.

The Residential Tenancy Branch reviewed the previous file and this file and concluded that no administrative error was made, and that the landlord filed the same application two times. This conclusion is supported by the tenant's testimony that he was served with the landlord's application for dispute resolution prior to both hearings. This application for dispute resolution was filed on May 26, 2020, the same day the landlord's claim was originally dismissed.

Upon review of the previous decision and considering the above findings of the Residential Tenancy Branch, I conclude that the May 14, 2020 claim is substantively the same as the current application and that the matter has been conclusively decided and cannot be re-heard. The landlord's application is therefore dismissed without leave to reapply for lack of jurisdiction.

Conclusion

The landlord's application for dispute resolution is dismissed for lack of jurisdiction.

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: June 17, 2020

Residential Tenancy Branch