



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCMA SURREY DELTA BRANCH and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 29, 2020, wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities issued on August 9, 2020 (the "Notice") as well as recovery of the filing fee.

Both parties called into the hearing . The Landlord was represented by the Chairperson, M.G. as well as the Trustee, I.V. The Tenant was in attendance with a translator, Z.S. The Tenant also had two witnesses, J.D. and R.S. available to testify, although I did not hear from them.

Preliminary Matter—Prior Hearing

During the hearing the Tenant confirmed he had made a previous application to cancel the Notice; the hearing of this Application occurred before Arbitrator Molnar on September 21, 2020 (the "Prior Hearing"; the file number for which is included on the unpublished cover page of this my Decision.) A review of Arbitrator Molnar's Decision and the evidence filed in that Prior Hearing confirms the Arbitrator granted the Tenant's request to cancel the Notice. Although Arbitrator Molnar recorded the Notice as being issued on August 8, 2020, the Notice in the previous hearing is the same Notice as in the hearing before me.

Analysis

Section 77(3) of the *Residential Tenancy Act* (the "Act" provides that, except as otherwise provided, a Decision is final and binding.

Further, the legal principle of *Res judicata* (“the matter is judged”) prevents a party from pursuing a claim that has already been decided. *Res Judicata* is an equitable principle that, when its criteria are met, precludes relitigation of a matter. There are a number of preconditions that must be met before this principle will operate:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision (or their privies) are the same in both the proceedings.

All three of the above preconditions apply in the case before me. The question of the validity of the Notice was decided by Arbitrator Molnar and his decision was final. Further, the claim before me relates to the same parties as in the matter before Arbitrator Molnar. In this case, Arbitrator Molnar already canceled the Notice which is the subject matter of the dispute before me. That decision was final and binding and there is no jurisdiction under the *Act* that allows my reconsideration of this issue.

The Landlord’s agents claimed they were unaware of the September 21, 2020 hearing. Arbitrator Molnar found the Landlord was served in accordance with the *Act*. The only avenue possibly available to the Landlord in this case is to request Review Consideration under the very limited grounds set forth in section 78 of the *Act*, or to pursue a B.C. Supreme Court Judicial Review of the Molnar Decision.

For these reasons I dismiss the Landlord’s claim for an Order of Possession and Monetary compensation based on the Notice as the Notice has already been cancelled.

During the hearing the parties provided submissions with respect to the amount of rent payable as well as the authenticity of the residential tenancy agreements filed in evidence. Should the parties file further Applications before the Residential Tenancy Branch, the parties are encouraged to provide a copy of the *original* residential tenancy agreement.

Conclusion

By Decision dated September 21, 2020 Arbitrator Molnar cancelled the Notice. As the Notice has already been cancelled, the Landlord’s request for an Order of Possession and monetary compensation based on the Notice 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: October 13, 2020

Residential Tenancy Branch