



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, CNR-MT**

Introduction

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

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- More time to file their application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 66; and
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The tenant attended and was assisted by an advocate.

The landlord confirmed receipt of the tenant's application and materials and testified that they have not filed any materials of their own. Based on the testimonies I find the landlord duly served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties corrected the dispute address used in the application. The corrected dispute address is used in the style of cause for this decision.

Issue(s) to be Decided

Are the tenants entitled to any of the relief sought?

Background and Evidence

There was a previous decision and orders issued under the file number on the first page of this decision arising from an ex parte Direct Request proceeding. In that proceeding the presiding adjudicator found that the tenants were deemed served with a valid 10 Day Notice dated November 2, 2020, that the tenants failed to dispute the notice or pay the rental arrear and issued an Order of Possession.

The tenants were duly served with the Order of Possession and the parties testified that this tenancy has ended with the tenants having vacated the rental unit. Residential Tenancy Branch records show that the tenant did not file a complete application for review of the earlier decision and order.

Despite a conclusive Order being issued the tenant filed the present application to dispute the 10 Day Notice and believes the landlord's service of the Order of Possession to be a breach of the Act, regulations or tenancy agreement. The tenants now seek an extension of time to file the present application and to dispute the 10 Day Notice.

Analysis

The principle of *res judicata* prevents an arbitrator from reconsidering a matter for which a final binding decision has been issued. I find that the previous decision of December 8, 2020 has conclusively dealt with the issue of the 10 Day Notice of November 2, 2020 and it is not open for me to make new findings.

I find the tenant's submission that the landlord is in breach of the Act, regulations or tenancy agreement to have no evidentiary basis. The landlord issued a Notice to End Tenancy, made an application for dispute resolution and when an Order was issued, duly served it on the tenants. I find no violation of the Act, regulations or tenancy agreement on the part of the landlord and accordingly dismiss this portion of the tenant's application.

I find the present application, seeking reconsideration of the basis for a Notice to End Tenancy, which has been conclusively determined to be a misuse of the dispute resolution process. The tenant was assisted by an advocate who ought to have been aware of the conclusive nature of the earlier Decision and Order and the statutory mechanism for a review consideration. Instead of proceeding in accordance with the Act and regulations the tenant chose to file the present application seeking reconsideration of a conclusive Decision and Order for a tenancy which has ended.

Conclusion

The tenant's application is dismissed in its entirety 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: March 19, 2021

Residential Tenancy Branch