



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on December 31, 2020, wherein the Tenant sought the sum of \$35,000.00 from the Landlord for an alleged "wrongful eviction".

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on May 7, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Jurisdiction

The parties appeared before Arbitrator Wood on November 5, 2018. By Decision dated November 5, 2018, Arbitrator Wood dismissed the Tenant's request for an Order canceling a 1 Month Notice to End Tenancy for Cause and granted the Landlord an

order of Possession. The file number for that matter is included on the unpublished cover page of this my Decision.

In the hearing before me the Tenant alleged that original eviction was *unlawful*, and that he should therefore be entitled to related monetary compensation.

As explained during the hearing, once an Arbitrator at the Residential Tenancy Branch makes a decision it is not open for another Arbitrator to rehear the matter and make another decision. Arbitrator Wood's Decision to end the tenancy cannot be changed by submitting a subsequent application. I am precluded, by operation of the legal principle, *Res Judicata*, from reconsidering Arbitrator Woods's final and binding Decision on this matter.

Res Judicata ("the matter is judged") is legal principle that, when its criteria are met, precludes relitigation of a matter. There are three 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 to End Tenancy for Cause was decided by Arbitrator Wood; her decision was final and binding; and, the parties are the same in both proceedings. While the Tenant now seeks monetary compensation related to his allegation that the eviction was unlawful, that claim flows from the finding of Arbitrator Wood that the eviction was indeed lawful. I therefore find that I am precluded from considering this matter on the basis of *Res Judicata*.

There are limited grounds for Review Consideration of a decision pursuant to section 79 of the *Act*. These grounds involve procedural matters such as a party missing a hearing for reasons beyond their control as well as new and relevant evidence which was not available at the original hearing and would have a material effect on the outcome. The final ground is that the decision was obtained by fraud. There was no evidence before me to suggest the Tenant applied for Review Consideration; in any case, there are strict time limits imposed by section 80 of the *Act* all of which have long past.

The Review Consideration process is not meant to address situations where a party believes the decision was wrong. Such matters must be brought before the B.C. Supreme Court on Judicial Review, as only a B.C. Supreme Court Judge has jurisdiction to consider the merits of the Arbitrator's decision. The Tenant confirmed that he had filed for Judicial Review of the Decision in the B.C. Supreme Court, although the status of the proceedings was unknown to him.

Discretion exists to not apply *Res Judicata*, even when the preconditions are met. The Supreme Court of Canada in the 2001 Decision in *Danyluk* and later in the 2013 Decision of *Penner v. Niagara (Regional Police Services Board)* explained that "the underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case." Further, this discretion exists to ensure that "a judicial doctrine developed to serve the ends of justice should not be applied mechanically to work an injustice."

The Court then identified seven factors which could be considered in determining whether it would be fair and just in applying *Res Judicata*:

1. the wording of the statute;
2. the purpose of the legislation;
3. the availability of an appeal;
4. safeguards within the administrative process;
5. the expertise of the administrative decision maker;
6. the circumstances giving rise to the prior decision;
7. any potential injustice that might result from the application or non-application of the principle (which the Court described as "a final and most important factor").

A qualitative assessment of these factors must be carried out as it is possible that the significance of one factor could outweigh a collection of other factors. The question to be decided is "would applying the principle be unfair or unjust?" I find the first and third factors to be the most significant in the case before me.

In terms of the first factor, section 58(2)(c) of the *Residential Tenancy Act* provides as follows:

58 ...

(2) 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

...

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

As noted, the Tenant confirmed he had filed for Judicial Review of Arbitrator Wood's decision. I find that the current application relates to the validity of the eviction/1 Month Notice to End Tenancy and is therefore substantially linked to the Supreme Court proceedings commenced by the Tenant.

In terms of the third factor, Decisions of the Residential Tenancy Branch may be appealed to the B.C. Supreme Court by way of Judicial Review Proceedings. The evidence before me confirms such proceedings have been commenced.

Again, as noted during the hearing, if the Tenant believes the November 5, 2018 decision contains an error in law, is biased or unfair, the proper course is to apply to the Supreme Court of British Columbia for a judicial review of the decision.

I am mindful of the seventh factor listed above as well as the Tenant's concern submissions regarding the two year limitation imposed by section 60 of the *Act*. I note that section 58(4)(b) provides that a Judge of the Supreme Court may make any Order that the Director (or his delegates: Arbitrators) may make under the *Residential Tenancy Act*. This includes extending time limits pursuant to section 66.

Conclusion

The matters raised in the Tenant's Application have already been decided by a prior decision of the Residential Tenancy Branch. By operation of the legal principle of *Res Judicata*, I decline jurisdiction to hear this matter. Further, the Tenant commenced Judicial Review proceedings in the B.C. Supreme Court by way of Petition. As the matter is substantially before the Supreme Court, jurisdiction is further declined pursuant to section 58.

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: May 13, 2021

Residential Tenancy Branch