Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated March 6, 2021 ("Two Month Notice"); to suspend or restrict the Landlord's right to enter; and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The Tenant, an advocate for the Tenant, G.R. ("Advocate"), the Landlord, and the Landlord's niece and translator, G.K. ("Translator"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Advocate said that the Tenant served the Landlord with the Application and Notice of Hearing documents by registered mail on March 23, 2021, and that he served his evidence to the Landlord via registered mail on June 8, 2021. The Tenant provided Canada Post registered mail tracking numbers to confirm the service. The Landlord confirmed that he received these packages from the Tenant. The Landlord said that he did not serve the Tenant with the evidence that he uploaded to the RTB. The Tenant is the Applicant and the Landlord is the Respondent in this matter. Rule 3.15 sets out a respondent's obligations regarding service of the evidence on which they intend to rely in the hearing. Rule 3.15 states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy

> Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Given that the Tenant did not receive the Landlord's evidence, it would be administratively unfair of me to consider that evidence in determining this matter. Accordingly, I advised the Parties that I would not consider the Landlord's evidence, in making my Decision. I also informed the Tenant that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Further, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside the Two Month Notice. I said I found that not all the claims on the Application are sufficiently related to be determined during this proceeding. I said I would, therefore, only consider the Tenant's request to set aside the Two Month Notice. As such, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Before the Parties testified, the possibility of a settlement was raised; however, the Landlord indicated that he was not interested in a settlement discussion and that he wished for a decision from the RTB in this matter, instead.

Preliminary Matter: Res Judicata

In the Tenant's first argument, the Advocate said that this matter has already been decided in a decision of another arbitrator dated January 11, 2021. That hearing number is quoted on the cover sheet of this Decision ("January Decision"). The Tenant

submitted a copy of the January Decision into evidence. The Advocate argued that the Two Month Notice must be dismissed on the legal basis of *res judicata*, which means that the matter has already been decided.

"Res judicata" is a rule of law that a final decision, determined by an arbitrator with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the Parties, and constitutes an absolute bar to a subsequent application involving the same claims.

Black's Law Dictionary defines *res judicata*, in part as follows:

> A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.
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> [emphasis added]

The issue considered in the January Decision was the Tenant's application to dispute a Two Month Notice to End the Tenancy for Landlord' Use dated October 2, 2020 ("October Two Month Notice"). In the January Decision, the arbitrator considered various reasons that the Landlord gave for having issued that notice, including that the Landlord wanted his parents to move into the rental unit. Near the end of that decision, the arbitrator stated:

> As the Landlord has submitted insufficient evidence to establish that his parents intend, in good faith, to occupy the rental unit, I grant the Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

The arbitrator went on to cancel the October Two Month Notice and find that the tenancy would continue until ended in accordance with the Act.

I note that there is no evidence before me that the Landlord appealed that decision to the RTB or to the BC Supreme Court via judicial review. As such, I find that the Landlord accepted that decision of the RTB.

When I consider the evidence before me in this matter, I find that the Landlord has tried to evict the Tenant a second time for the same reason with the current Two Month Notice. I find that the Landlord has done this despite a decision of the Director having

been made, which cancelled the October Two Month Notice. I find that the Landlord does not have the right to do the same thing again, as the matter has already been settled.

Accordingly, I find that the Tenant is successful in this Application, as I cancel the Two Month Notice and find it to be unenforceable, because it has already been rejected by the Director in a previous decision. As set out in *Dhillon v. Robertson,* 2020 BCSC 641

> [193] The doctrine of *res judicata* prevents the re-litigation of issues that have been determined with finality in previous litigation between the same parties: *Doering v. Grandview (Town)*, 1975 CanLII 16 (SCC), [1976] 2 S.C.R. 621. This doctrine provides litigants with the certainty that once a matter has been before the court, the court's determination is final, subject only to appellate review.
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> [194] The three requirements for cause of action and issue estoppel are well known:
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> i. The claim or issue was (or, in the case of cause of action estoppel, ought to have been) decided in a previous litigation;
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> ii. The previous litigation or decision was final; and
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> iii. The parties in the current litigation, or their privies, were parties to the previous litigation or decision.

In this case, (i) I find that the issue was decided in a previous arbitration; (ii) the previous arbitration decision was final, as the Landlord did not dispute the finding through appeal or judicial review; and (iii) the parties to the current arbitration were parties to the previous arbitration decision.

The Landlord had previously served the October Two Month Notice to the Tenant, so that the Landlord's parents could move in to the rental unit. However, a previous arbitrator decided that the notice was not served in good faith and that the Landlord had an ulterior motive for ending the tenancy with a two month notice.

I find that the Tenant is successful in his Application to cancel the Two Month Notice. I cancel the Two Month Notice and find that it is of no force or effect, based on the legal doctrine of *res judicata*.

Conclusion

The Tenant's Application to cancel the Two Month Notice is successful, as the matter had already been decided in a previous arbitration decision, and the legal doctrine of *res judicata* applies – the matter cannot be raised again. The Two Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act.

The Tenant's other claims are dismissed with leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 2, 2021

Residential Tenancy Branch