



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant seeks compensation for various matters pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, he applied to recover the cost of the application filing fee, pursuant to section 72 of the Act.

Both parties, along with an agent for the tenant, attended the hearing.

It should be noted that there was a preliminary issue regarding the service of evidence and the Notice of Dispute Resolution Proceeding package. The tenant and his agent both provided evidence and information regarding service of the above-noted documentation, but the landlord disputed ever having received anything. While service of a Notice of Dispute Resolution Proceeding and evidence is ordinarily a crucial matter that must be dealt with before proceeding to a hearing, for the reasons set out below there are other, much larger issues, with this application.

Preliminary Issue: Claim Related to Previous Decision and Order

The tenant's application for dispute resolution included the following description in respect of the claim being made (for \$35,100.00):

Tenant disputed a 10 day notice issued on 6/11//20 and received a hearing date for 11/02/21. Landlord filed for eviction by DR based on a 10 day notice dated 6/12/20. Tenant is seeking monetary compensation as (1) Tenant did not receive 6/12/20 10 Day Notice and (2) For Direct Request from the RTB, Landlord falsely indicated there is currently "No" dispute against her, (3) Falsely declared under oath at the Supreme Court of BC that all information provided to the RTB and for affidavit was true.

It is noted that the landlord, on December 17, 2020, filed a direct request application based on a 10 Day Notice to End Tenancy for Unpaid Rent that was served on December 12, 2020. The landlord was issued a decision and an order of possession on January 15, 2021. There was also a participatory hearing on February 16, 2021; by the time that hearing occurred the tenancy was already over, and the tenant had vacated.

The tenant subsequently filed an application for review under section 79 of the Act. On January 27, 2021, a decision on the application for review was issued, in which the reviewing arbitrator upheld the decision and order of January 15, 2021.

The tenant's application for review contained the argument that while they had received a 10 Day Notice to End Tenancy for Unpaid Rent on December 11, 2020, they never received a second notice on December 12, 2021. The reviewing arbitrator found that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on December 12, 2020.

In the present application, the tenant's position is such that because the tenancy was ended based on one notice and not the other, that compensation must flow. In essence, the tenant seeks compensation based on what might be called an unlawful eviction (my words). However, as I explained to the parties during the hearing, while there is obviously some disagreement about *which* notice to end tenancy was served on the tenant, the decision of January 15 and the review decision of January 27 both found that the tenancy was ended in accordance with a properly served notice. In other words, previous decisions of the Residential Tenancy Branch establish that the tenancy was ended lawfully and in accordance the Act. For me to award any compensation as claimed, it would be necessary for me to essentially overrule or make findings of fact and law contrary to previous decisions. This, of course, cannot be done, both due to the principle of *res judicata* and because the previous decisions must stand unless they are set aside through judicial review at the Supreme Court.

In respect of the second or third claims, namely, the alleged false claims previously made by the landlord, there is no provision under the Act by which compensation may flow from making false or fraudulent claims. In other words, what the tenant is seeking is essentially a tort claim for perjury. There is no such tort under Canadian common law for perjury, or, for that matter, under the Act. As such, this aspect of the tenant's claims cannot be considered.

Conclusion

The tenant's application is dismissed without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 6, 2021

Residential Tenancy Branch