Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNR-MT, PSF

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- An order for monetary compensation pursuant to s. 67;
- An order to cancel a 10-Day Notice to End Tenancy signed March 3, 2022 pursuant to s. 46;
- An order pursuant to s. 66 for more time to dispute the 10-Day Notice; and
- An order under s. 65 that the Landlord provide services or facilities.

T.F. appeared as Tenant. She was assisted by her advocate, T.C.. M.M., the Tenant's sister, also appeared.

At the outset of the hearing, I confirmed with the Tenant that M.M. would not be providing evidence and was present in a support capacity. Near to the conclusion of the hearing, the Tenant raised an objection that M.M. was not permitted to provide evidence. I advised I placed no restriction on M.M.'s ability to provide evidence and asked, once more, whether she would do so. I confirmed with the participants that M.M. would not be providing evidence. M.M did not provide evidence during the hearing.

J.A. appeared as agent for the Landlord, who is his father. T.A. appeared as the Landlord. J.A. acted as translator for T.A.. J.A. certified that he was able to translate Korean to English, and vice versa, on behalf of his father. The Landlord's property manager, S.S., also attended the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I advised that the hearing was being recorded automatically by the Residential Tenancy Branch.

The Tenant's advocate advised that the Notice of Dispute Resolution was served by way of registered mail sent on March 25, 2022. The Tenant's evidence was sent by way of registered mail on April 12, 2022. The Landlord's agent acknowledged receipt of both registered mail packages, though noted that the registered mail package of April 12, 2022 was received on April 20, 2022. I advised with respect to the service timelines as set out under the Rules of Procedure and the Landlord raised no objections with respect to the late service of the Tenant's evidence. Accordingly, I find that pursuant to s. 71(2) of the *Act* the Notice of Dispute Resolution and the Tenant's evidence was sufficiently served on the Landlord based on their acknowledged receipt and based on the lack of objection raised by the Landlord with respect to late service.

The Landlord's agent advised that their responding evidence was served on the Tenant on April 20, 2022. The Tenant's advocate raised no objections with respect to the service and acknowledged receipt of the Landlord's response evidence. I find that pursuant to s. 71(2) of the *Act* that the Landlord's response evidence was sufficiently served on the Tenant based on its acknowledged receipt and the lack of objections with respect to late service.

Preliminary Issue – Tenant's Claim

The Landlord's evidence included a decision, an order for possession, and a monetary order for unpaid rent all dated April 19, 2022. These orders were obtained by the Landlord through a direct request application, which appears to have been made on March 15, 2022. The orders were obtained based on the 10-Day Notice. The orders and the other decision were discussed by me with the parties, none of whom indicated that the April 19, 2022 decision and orders dealt did not apply to the parties or the circumstances of the Tenant's present application. Indeed, the details from the Landlord's direct request application correspond with the present matter.

At the hearing, I advised that the Tenant's claim to cancel the 10-Day Notice could not be dealt with by me by virtue of the orders made on April 19, 2022. The matter is *res judicata*, which is to say that it has already been decided. I do not have authority under the *Act* to sit in judgment or appeal of the April 19, 2022 decision and overturn the orders from that matter. Challenges to that decision, if any, would have to be pursued through other avenues. As orders have already been made with respect to the 10-Day Notice, I find that the issue of cancelling the 10-Day Notice is *res judicata*. This portion of the Tenant's claim is, therefore, dismissed without leave to reapply.

The Tenant also sought an order that the Landlord provide services or facilities under s. 65 of the *Act*. I declined to proceed on this issue on the basis that claims of this nature are only applicable in the event that there is an active tenancy. Given the orders of April 19, 2022, the tenancy is at an end. Therefore, as there is no active tenancy, this aspect of the Tenant's application is dismissed without leave to reapply.

The hearing proceeded on the basis of the Tenant's monetary claim, which in the application was stated at being $300.00 for repairs that were paid for by the Tenant. Rule 2.2 of the Rules of Procedure provides that a claim is limited to what is stated in the application. Through the course of the hearing, the Tenant and her advocate made submissions with respect to services that were alleged to have been withheld or withdrawn by the Landlord. I had to advise the Tenant, on several occasions, that the claim as stated in the application was for $300.00 for repair expense. No amendments were filed nor did I permit amendment of the application at the hearing as Rule 4.2 did not apply.

The Tenant provided evidence with respect to an expense of $300.00 for the repair to a hot water tank in August 2021 and indicated that she had notified the Landlord of this issue before incurring the expense. No receipts were provided by the Tenant. No monetary order worksheet was put into evidence by the Tenant.

The Landlord denied that Tenant had paid any amount for these repairs and further advised that the matter of these expense repairs were the subject of another dispute for emergency repairs that came on for hearing on February 18, 2022. The Tenant's evidence included the reasons from the February 18, 2022 hearing, which states the following:

> SS stated that the tenants had not actually incurred any cost of doing emergency repairs. She stated that the landlord had borne the cost of these repairs and had submitted documentary evidence confirming this. TC agreed.
>
> As such, and with the consent of TC, I dismiss the tenants' application to recover the cost of emergency repairs.

Near to the conclusion of the hearing, T.C. and the Tenant confirmed that the issue of the monetary order for expenses for the repairs was replicated from the prior claim for

emergency repairs and was indeed the same claim advanced before the Residential Tenancy Branch on February 18, 2022.

In *Khan v Shore*, 2015 BCSC 830 ("*Khan*"), Fisher J. explored the issue of *res judicata* in the context of multiple notices to end tenancy. The following was stated at paragraphs 29 in that decision:

> [29] The doctrine of *res judicata* is based on the community's interest in the finality and conclusiveness of judicial decisions and the individual's interest in protection from repeated suits for the same cause. In *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180, the BC Court of Appeal reviewed these principles, stating this at para. 26:
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> > Appellate courts in Canada have emphasized that the importance of finality and the principle that a party should not be 'twice vexed' … for the same cause, must be balanced against the other "fundamental principle" … that courts are reluctant to deprive litigants of the right to have their cases decided on the merits: see *Toronto (City) v. Canadian Union of Public Employees, Local 79*, 2003 SCC 63, at para. 55; *Revane v. Homersham,* 2006 BCCA 8, at paras. 16-7; Lange at 7-8.
> >
> > (emphasis in original)

I find that the matter of the $300.00 monetary claim was dealt with by the decision of February 18, 2022 and I make this finding based on the admission of the same by the Tenant and her advocate. It is inappropriate to advance the same claim after having lost it previously, which runs contrary to the doctrine of *res judicata* and forces respondents to attend hearings on the same issue. This is particularly problematic where, as here, the party consented to withdrawing the previous claim. The Tenant's advocate had admitted at the previous hearing that the Landlord, not the Tenant, had paid for the repairs. It would be profoundly unfair and unjust to argue otherwise in the context of new application.

Given that the monetary claim was decided previously, it is hereby dismissed without leave to reapply.

Conclusion

The Tenant's claim under s. 46 to cancel the 10-Day Notice is dismissed without leave to reapply as it is res judicata by virtue of the decision and orders made on April 19, 2022. The Tenant's claim under s. 65 that the Landlord provide services or facilities is

moot as the tenancy is over given the order for possession granted on April 19, 2022. The claim under s. 65 is dismissed without leave to reapply.

The Tenant's claim for monetary compensation under s. 67 in relation to a $300.00 repair expense is dismissed without leave to reapply. Similarly, this matter was the subject of another application brought by the Tenant and was dismissed, by consent, on February 18, 2022. It too is res judicata.

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: April 25, 2022

Residential Tenancy Branch