



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on February 25, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation under section 51(2) of the Act related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on October 31, 2022, and was attended by the Landlord. The Tenant did not Attend. All testimony provided was affirmed. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) Package from the Tenant and stated that they have no concerns with regards to the date or method of service. I therefore find that the Landlord was sufficiently served with the NODRP for the purposes of the Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure).

The Landlord was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over myself and any other participants, and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Landlord attended the hearing at the scheduled time, ready to proceed, and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for 15 minutes, neither the Tenant nor an agent acting on their behalf appeared. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing details shown on the NODRP were correct and note that the Landlord had no difficulty attending the hearing using the information contained in the NODRP served on them by the Tenant. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 1:30 P.M. on October 31, 2022. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. I therefore conducted the dispute resolution hearing despite the absence of the Tenant or an agent acting on their behalf.

The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. At the request of the Landlord, a copy of the decision and any orders issued in their favor will be emailed to them at the email address listed in the Application.

Preliminary Matter

The Landlord stated that this same matter was previously heard and decided by an arbitrator at the Residential Tenancy Branch (the Branch), who dismissed the Tenant's claim without leave to reapply. I have read the previous decision, a copy of which was submitted by the Landlord, and I find that it deals with the same rental unit, the same parties, the same Two Month Notice and the same claim for compensation. As a result of the above, I dismiss the Tenant's Application in its entirety, without leave to reapply on the basis of *res judicata*.

Res judicata is a rule in law that a final decision, determined by an Officer 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 claim.

With respect to *res judicata*, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

As I had no ability to re-decide the matter of compensation under section 51(2) of the Act, I did not hear evidence and testimony regarding whether the Landlord complied with the stated purpose set out on the Two Month Notice for ending the tenancy, or whether extenuating circumstances applied.

Conclusion

The Tenants' Application is dismissed 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 Act.

Dated: October 31, 2022

Residential Tenancy Branch