



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Applicant under the *Residential Tenancy Act* (the Act) on July 19, 2022, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. on December 9, 2022, and was attended by the Applicant M.B. and their witness J.P. All testimony provided was affirmed.

Near the beginning of the hearing, the Applicant stated that a previous decision had been rendered wherein it was determined that they were an occupant of the rental unit rather than a tenant under the tenancy agreement. Upon further investigation I was able to determine that a previous decision was rendered by an arbitrator with the Residential Tenancy Branch (Branch) on October 11, 2022, the file number for which has been recorded on the cover page of this decision.

In that decision the arbitrator determined that M.B. is an occupant of the rental unit, and not a tenant under the tenancy agreement, and therefore declined jurisdiction to hear and decide the matter before them, which was an application for an early end to the tenancy under section 56 of the Act. I therefore find that the matter of whether the Applicant is a tenant under the tenancy agreement and therefore whether they have rights under the Act, has already been decided and is a matter of *res judicata* and cannot therefore be re-decided by me. *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 another arbitrator has previously decided that the Applicant is not a tenant under the tenancy agreement, I therefore find that they do not have rights under the Act, and I decline to render a decision on the substantive claims made by the Applicant in the Application for lack of jurisdiction. The parties may wish to seek independent legal advice in relation to this matter.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: December 9, 2022

Residential Tenancy Branch