



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order of possession pursuant to 2 Month Notice to End Tenancy for Landlord’s Use, pursuant to sections 49 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord did not attend the hearing, although I left the teleconference connection open throughout the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference monitoring system that the tenants and I were the only persons who had called into this teleconference.

The tenants attended the hearing with advocates , HR and TB. The tenants acknowledged service of the landlord’s Notice of Dispute Resolution Proceedings package.

Preliminary Issue

The tenants’ advocate advised me that the 2 Month Notice to End Tenancy for Landlord’s Use, subject to this hearing and issued on April 7, 2022, was adjudicated upon by an arbitrator on August 22nd. The file number for the previous dispute is recorded on the cover page of this decision and a copy of the previous decision was provided as evidence by the tenant. The conclusion of that decision states:

The Two Month Notice to End Tenancy for Landlords Use of Property dated April 7, 2022 is cancelled, it is of no effect or force, the tenancy continues.

The tenants testified that they sent a copy of the decision to the landlord with their evidence package on December 12, 2022. To the best of their knowledge, the decision has not been overturned.

Res judicata is Latin for “the thing has been judged”. Res judicata prevents someone from re-litigating an issue that has already been determined by a competent jurisdiction. Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

I find that the order cancelling the 2 Month Notice to End Tenancy for Landlord’s Use dated April 7, 2022 stands. The landlord is precluded from seeking an Order of Possession based on that notice to end tenancy by the legal doctrine of Res Judicata.

Conclusion

The 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 *Residential Tenancy Act*.

Dated: December 23, 2022

Residential Tenancy Branch