



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC; LRE; LAT; OLC

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;

The Tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:52 a.m. in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30. The Landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 system that the Landlord and I were the only ones who had called into this teleconference.

The Landlords testified that the Tenant did not provide them with the Notice of Dispute Resolution Proceedings (NDRP) and evidence. They became aware of the hearing when they called into the Residential Tenancy Branch on a separate matter and were told of the hearing and provided a courtesy copy of the NDRP. Although the tenancy has ended, they called into the hearing in case the Tenant attended the hearing,

The Landlord confirmed that the tenancy ended in December 2022 based on an Ex Parte proceeding granting the Landlord an order of possession and a monetary order decided by another arbitrator in a Decision dated December 13, 2022 (the "December Decision"). The Landlords called into the hearing concerned that the Tenant's application may reverse the December 2022 decision.

I explained the legal basis of *res judicata* to the Landlord, which means that the matter has already been decided.

"*Res judicata*" is a rule of law that a final decision, determined by an arbitrator 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 claims.

Black's law Dictionary defines *res judicata*, in part as follows:

A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgement. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. [emphasis added]

The issues considered in the December Decision was the Landlord's application were as follows:

- an Order of Possession based on unpaid rent pursuant to ss. 46 and 55 of the Act;
- a Monetary Order for unpaid rent pursuant to s. 67 of the Act (\$250.00); and
- authorization to recover the filing fee for the application from the Tenant pursuant to s. 72 of the Act (\$100.00).

In the December Decision, the arbitrator considered the evidence and granted the Landlord an Order of Possession and a Monetary order. The arbitrator wrote:

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the Act and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 24, 2022

Therefore, I find that the landlords are entitled to an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act.

I note there is no evidence before me that the Tenant appealed that decision to the RTB or to the BC Supreme Court via judicial review. As such, I find that the Tenant accepted the RTB decision; therefore, there is nothing for me to consider. Accordingly, the Tenant's application to cancel the One Month Notice to End Tenancy is dismissed without leave to reapply.

The Tenant also applied for additional various and wide-ranging relief that is only relevant if the tenancy continued. As such the additional relief requested by the Tenant, predicated on continued tenancy, are dismissed, without leave to reapply.

The Landlord stated that two (2) additional hearings have been scheduled, March 16, 2023 and September 19, 2023.¹ The Landlord wanted to know if they were required to attend the March 16, 2023 hearing. Again, the Landlord testified the Tenant had not served them with the NDRP but they found out when they called the RTB.

The March 16, 2023 hearing deals with an application filed by the Tenant to cancel a 10 Day Notice issued by the Landlord on November 3, 2022 for unpaid rent. This 10 Day Notice is separate and apart from the 10-Day Notice that was the subject of the December Decision. I confirmed the March 16, 2023

¹ All file numbers have been recorded on the cover of this decision

hearing is scheduled to proceed. I recommend the Landlord contact Information Services² with any questions they may have concerning attendance or other matters. I have included a link with the contact number for the Landlord's convenience.

The September 19, 2023 hearing deals with a Monetary Order Request from the Landlord for unpaid rent in the amount of \$2700.00. The Landlord stated that he was to serve the Tenant with the NDRP by January 9, 2023 and submitted substituted service request. The Landlords were cautioned by Legal Counsel to have no contact with the Tenant given her allegations against both Landlords. The Tenant has refused contact with the Landlords' legal counsel stating, "Do not message me." At this time, the NDRP has not been served.

The Landlord asked if their application for a monetary order could be heard at this time.. The Landlord uploaded their documentation to the file on January 15, 2022. I explained to the Landlord that in this instance, I was unable to hear their Monetary Order Request.

Again, I suggested that the Landlord contact Information Services with any questions or concerns they may have.

Conclusion

The Tenant's Application to cancel the One Month Notice is dismissed without leave to reapply. The Tenant's application for orders that the Landlord comply with the Act; to change locks; to limit Landlord access to the rental unit 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: January 16, 2023

Residential Tenancy Branch

² <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/contact-the-residential-tenancy-branch>