



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNL, FFT**

### **Introduction**

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 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.

Both the tenant and the landlord attended the hearing. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and evidence but stated the tenant served them with additional evidence only 2 days before the hearing. As the tenant's late evidence was not served upon the landlords at least 14 days before the hearing, I excluded it from consideration in this decision.

The tenant acknowledged being served with the landlord's evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

### **Preliminary Issue**

At the commencement of the hearing, I asked the parties whether there were any previous or upcoming disputes regarding this tenancy. The tenant advised there were 4 previous hearings and the file numbers are recorded on the cover page of this decision. Some of the file numbers were listed in the tenant's document, *case\_Introduction.pdf*.

The tenant testified that after conducting a dispute resolution hearing, arbitrator Kaila cancelled a 2 Month Notice to End Tenancy for Landlord's Use on file .....089. The parties each received a copy of arbitrator Kaila's decision on December 15, 2022, according to both of their testimonies.

In that decision, Arbitrator Kaila determined the following:

*I find that the landlord has failed to establish that there is a good faith intention for her daughter, herself and her ex-husband to occupy the rental unit...I find the landlord's testimony and evidence was also inconsistent in respect to who the unit was required for whether it be the landlord's daughter, ex-husband or all three of them.*

*I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord. The landlord has failed to establish that she does not have an ulterior motive for ending the tenancy and that she truly intends to use the rental unit for the purpose stated in the Notice.*

Exactly two weeks after receiving a copy of the decision, the landlord served the tenant with another 2 Month Notice to End Tenancy for Landlord's Use on December 29, 2023. That notice is the subject of today's hearing.

The landlord's daughter testified that the difference between the previous hearing and this one is that the landlord (her mother) didn't have the benefit of her (the daughter's) assistance. The daughter states that she is also living in a small portion of the rental unit and that they need the entire rental unit back so that she, her father and her mother can all reside in it.

The reason for ending the tenancy in the Notice before me is identical to the one that was before Arbitrator Kaila, for the landlord, her spouse or her daughter to occupy it.

### Analysis

The legal doctrine of **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, or in this case, by a previous arbitrator. In practice, this means if you go to arbitration and lose, you cannot simply go to a different arbitrator and have the same matter heard again.

Res judicata is divided into two distinct types: cause of action estoppel and issue estoppel. This case from the Court of Appeal for British Columbia: Innes v. Bui, 2010 BCCA 322, sets out the difference between the two types:

*“Where the cause of action is the same, cause of action estoppel operates to prevent re-litigation of any matter that was raised or should have been raised in the prior proceeding. Where the cause of action in the two proceedings is different, issue estoppel operates to prevent re-litigation of any issue determined in the prior proceeding.”*

So, if the reasons for ending the tenancy a second time around are the same as the reasons in the first notice to end tenancy, cause of action estoppel may apply. If the reasons for re-litigating are the same but the issues involved have already been decided in a prior proceeding, issue estoppel may apply.

In the matter before me, on December 15, 2023, Arbitrator Kaila made a final, binding decision to cancel the landlord’s notice to end tenancy for landlord’s use as he found the landlord failed to establish that there is a good faith intention for her daughter, herself and her ex-husband to occupy the rental unit. Two weeks later, on December 29, 2023, the landlord sought to end the tenancy for the exact same reason or cause. I find that cause of action estoppel prevents the landlord from re-litigating the matter a second time around which means that the landlord is barred from seeking to end the tenancy for the exact same reasons.

Consequently, as the reasons for ending the tenancy in the notice to end tenancy dated December 29, 2023 are identical to the notice to end tenancy that was cancelled on December 15<sup>th</sup>, I cancel the landlord’s notice to end tenancy. This tenancy shall continue until it is ended in accordance with the Act.

As the tenant’s application was successful, the \$100.00 filing fee may be recovered. In accordance with the offsetting provisions of section 72, the tenant may reduce a single payment of rent owing to the landlord by \$100.00.

### Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it is ended in accordance with the Act.

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: May 09, 2023