



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, wherein they sought an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use, issued on January 25, 2023 (the "January Notice").

The hearing of the Tenants' Application was scheduled for 9:30 a.m. on May 29, 2023. Both parties called into the hearing.

### Preliminary Matter

The parties attended a prior hearing on January 5, 2023 which dealt with five separate applications (the file numbers for those applications is included on the unpublished cover page of this my Decision). One of the issues before the Arbitrator on that date dealt with the validity of a previous 2 Month Notice to End Tenancy for Landlord's Use which was issued on October 1, 2022 (the "October Notice"). The reasons cited on that previous notice were the same, namely that the Landlord wished to have her father move into the rental unit.

20 days after the January 4, 2023 hearing, and shortly after receiving Arbitrator Ceraldi's Decision dismissing the October Notice the Landlord issued the January Notice.

As explained during the hearing the Landlord's request to end this tenancy for occupation by her father has already been decided. The Landlord cannot issue a further notice for the same reasons simply because she was unsuccessful at the prior hearing.

Section 77(3) of the *Residential Tenancy Act* (the "Act" provides that, except as otherwise provided, a Decision is final and binding.

The legal principle of *Res judicata* (“the matter is judged”) prevents a party from pursuing a claim that has already been decided. *Res Judicata* is an equitable principle that, when its criteria are met, precludes relitigation of a matter; those criteria are:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision are the same in both the proceedings.

All three of the above preconditions apply in the case before me. The question of the Landlord's request to end the tenancy for her father to occupy the rental unit has already been decided. The January 5, 2023 decision was final. Further, the claim before me relates to the same parties. There is no jurisdiction under the *Act* that allows my reconsideration of this issue.

Should the Landlord disagree with Arbitrator Ceraldi's decision, the only avenue possibly available to the Landlord is to request Review Consideration under the very limited grounds set forth in section 79 of the *Act*, or to pursue a Judicial Review in the B.C. Supreme Court.

### Conclusion

The Tenants' request to cancel the January Notice is granted. The tenancy shall continue until 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 31, 2023

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Residential Tenancy Branch