



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sukhdev Singh Sandhu
and [tenant name sussed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with an application by the tenant's pursuant to the *Residential Tenancy* (the *Act*) for:

- cancellation of a One Month Notice for cause pursuant to section 47 of the *Act*;
- an authorization to recover the filing fee from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. I verified the names of the landlord and tenants on affirming both parties.

The landlord acknowledged receipt of the tenants' application for Dispute Resolution and evidentiary materials sent by registered mail. I find the landlord was served in accordance with section 88 and 89 of the *Act*.

The tenants acknowledged receipt of the landlord's evidentiary materials sent by regular email as allowed under state of emergency orders under Covid19. I find the tenants were sufficiently served as per section 71 of the *Act*.

Amendment:

Rule 2.3 of The Residential Tenancy Branch Rules of Procedure allow an Arbitrator to decline to hear or dismiss issues if the Arbitrator determines the issues are unrelated. I have determined that the tenant's application for a 10 Day Notice should be corrected to a One Month Notice for Cause. (as filed in evidence). I allow the application to proceed based on a One Month Notice for Cause.

Issues to be Decided

- Are the tenants entitled to cancel the One Month Notice pursuant to section 47 of the *Act*?
- Are the tenants entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*?
- If the tenants fail in this application, is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Preliminary Matter - Jurisdiction

At the commencement of the hearing both parties testified that this tenancy was the subject of previous three hearings under the file numbers provided on the first page of this decision and a Judicial Reviewing hearing heard in the Supreme Court of Vancouver on October 25, 2019.

In the written decision dated October 25, 2019 the Supreme Court Judge found as follows:

“conflicting evidence of the availability of Insurance, decision was not patently unreasonable. Petition is dismissed”

The legal principle of *res judicata* prevents an applicant from pursuing a claim already conclusively decided and prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment at the Supreme Court. It also precludes re-litigation of any issue, regardless of whether the action is on the same claim as the previous. Therefore, I find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

The application is dismissed without leave, as I do not have the jurisdiction to consider matters that have already been the subject of final and binding decisions by other Arbitrators appointed under the *Act* and the final and binding decision of the Supreme Court, Vancouver dated October 25, 2019.

As the tenants have been unsuccessful in their application, I decline the filing fee pursuant to section 72 of the *Act*.

Conclusion

As I am without jurisdiction to consider this matter, the tenant's application is dismissed without leave to reapply. The final and binding decision by Judicial Review dated October 25, 2019 remains in effect.

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 28, 2020

Residential Tenancy Branch