



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR CNC MNDC OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on October 10, 2023. The Tenant applied for multiple remedies pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenants' two Notice of Dispute Resolution Proceeding packages and evidence. I find these packages were sufficiently served. The Landlord stated he served his evidence by posting it to the Tenant's door on September 19, 2023. The Landlord did not provide any proof of service. The Tenants deny getting this package. Without further proof of service I find the landlord has failed to demonstrate that he sufficiently served his evidence. I find this evidence is not admissible.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds on the Tenant's application, with leave to reapply, with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause
- to cancel the 10 Day Notice to End Tenancy for Unpaid Rent

Issue(s) to be Decided

- Should the Notices be cancelled?

Background, Evidence, and Analysis

First, I turn to the 10 Day Notice issued. The Landlord confirmed that there was no unpaid rent, and he requested to withdraw the 10 Day Notice. The Tenants also confirmed there was no unpaid rent. As such, I hereby cancel the 10 Day Notice, issued July 16, 2023.

Next, I turn to the 1 Month Notice, dated July 16, 2023. In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

I note the Tenants provided a copy of a previous decision whereby they applied to cancel a 1 Month Notice they received in August 2022. That 1 Month Notice was issued under the same ground as this Notice, which is as follows:

- *Residential Tenancy Act* only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

I note a decision was rendered on this matter in January 2023. The most recent 1 month notice appears to be issued under the same basis.

I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer 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 claim.

In light of the above, I find the Landlord is barred from re-issuing the notice under the same grounds for the same reasons. I hereby cancel the 1 Month Notice issued in July 2023, as that issue has already been decided upon, and the Landlord was unsuccessful. The Landlord is cautioned that continuing to issue Notices to End Tenancy for matters already decided, may interfere with the Tenant's right to quiet enjoyment of the rental unit, and could constitute a violation of the Act.

Conclusion

Both Notices are cancelled, and of no force or 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: October 10, 2023

Residential Tenancy Branch