



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 MT CNR OLC AAT O SS FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed their application on September 19, 2013, and the Tenant filed their application on September 11, 2013.

No one was in attendance at the November 22, 2013, scheduled teleconference hearing.

Issue(s) to be Decided

Should this application be dismissed with or without leave to reapply?

Background and Evidence

There was no additional evidence or testimony provided as there was no one in attendance at the scheduled hearing.

Evidence was received from both parties on September 30, 2013, which indicated these issues were significantly linked to a matter being heard in Supreme Court on November 15, 2013 and that both parties requested an adjournment to the September 22, 2013 hearing. There was documentary evidence on file which indicated that matters relating to these issues would be heard in Supreme Court on November 15, 2013. The hearing was to be reconvened on November 22, 2013, at 10:30 a.m.

A letter was placed on file November 25, 2013, received from the Landlord's Legal Counsel which indicates while dealing with the Supreme Court action the parties

reached an interim agreement to request another adjournment regarding the Residential Tenancy matters.

Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Rule 6.1 of the Rules of Procedure provides that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from **both the applicant and the respondent** is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding [emphasis added].

These matters were set to be heard November 22, 2013; however no one appeared at the reconvened hearing. After completion of the hearing a fax was placed on file which was received from the Landlord. The fax indicated that in the process of dealing with the Supreme Court matters the parties mutually agreed and requested a second adjournment. No written request or consent for adjournment was received from the Tenant and no written mutual agreement was submitted.

In the absence of any evidence of a mutual agreement relating to the Supreme Court matters and in the absence of the Tenant's written consent to adjourn these matters for a second time, I hereby dismiss both the Landlord's and Tenant's applications, with leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's application with leave to reapply.

I HEREBY DISMISS the Tenant's application with leave to reapply.

This dismissal does not extend any applicable time limits set out under 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: November 25, 2013

Residential Tenancy Branch

