



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNR, CNL, LRE, PSF, OLC, MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel two notices to end tenancy; an order to restrict the landlord's right to access the rental unit; an order requiring the landlord to provide services or facilities; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord; and his agent.

As per the tenant's submissions and confirmed by her in the hearing the tenant vacated the rental unit on September 30, 2016. As a result, I find the tenant no longer requires canceling the Notices to End Tenancy or any orders to have the landlord's access to the rental unit restricted or to have the landlord provide services or facilities, as the tenancy has ended. I therefore amend the tenant's Application for Dispute Resolution to exclude these matters.

The landlord submitted that he had not been made aware of this hearing until mid-October 2016 by email. He submitted that on October 31, 2016 he sent a fax to the tenant seeking clarification on what the hearing was about or if it was even a hearing. The landlord submitted he received a Canada Post tracking number from the tenant and reviewed the tracking information that confirmed the registered mail from the tenant was not deliverable as addressed.

During the hearing I attempted to ascertain details of the landlord's submissions related to the failure of the tenant to serve him with documents related to this Application. Initially the landlord's agent began responding to my questions that had been direct to the landlord. I asked for the landlord to respond directly. The agent submitted that the landlord was not able to respond because he was incapacitated to do so.

Despite repeated attempts to answer my specific questions with direct answers the landlord's agent continued to disregard my instructions to only answer my questions. When she could not follow that instruction I instructed that I would not proceed until the landlord himself began to answer my questions.

Upon asking my first question, the landlord stated that he could not recall anything further and that he would have to look it up. I asked him to do so. The landlord could not provide me with any details in relation to my questions. As such, I advised both parties I would determine our next steps, then, based solely on the information provided.

I also advised the landlord that I would not allow the landlord's agent to continue to speak on behalf of the landlord during this hearing. The landlord and his agent departed from the hearing. The hearing continued in their absence.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

From the submissions of both parties I am satisfied that the tenant used an incomplete service address when she tried to serve the landlord with her Application for Dispute Resolution and her evidence. As a result, I am satisfied that the tenant failed to serve the landlord with notice of this hearing and her Application as is required under Section 59 of the *Residential Tenancy Act (Act)*.

I note that the tenant did not object to an adjournment because she stated that she had additional evidence to submit. However, as this was the tenant's Application for Dispute Resolution I find the tenant is bound, by Residential Tenancy Branch Rule of Procedure 3.14, to ensure all the evidence she intends to rely upon must be served at least 14

days prior to the hearing. As this proceeding has already been convened I find the tenant cannot now submit additional evidence.

Residential Tenancy Branch Rule of Procedure 6.10 states that disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

While parties have the right to engage an agent to act on their behalf during a tenancy and/or during a hearing the agent must comply with all of the requirements set out in the Rules of Procedure, including Rule 6.10. In the case before me, the landlord may have the agent DS represent him at the reconvened hearing. However, I caution both the landlord and the agent that either or both may be excluded from the reconvened hearing if they do not follow directions or orders I make during the proceeding.

I also suggest that if the landlord has difficulty in presenting orally to a legal proceeding such as this hearing he may submit any written statements, preferably in the form of a sworn affidavit, regarding any details or responses to the tenant's claims.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for receiving a Notice to End Tenancy for Landlord's Use of Property;; for all or part of the security and pet damage deposits and to recover the costs associated with pursuing this claim; the filing fee from the landlord for the cost of the tenant's Application for Review Consideration on another file; and the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Conclusion

Based on the above:

- **I order** this hearing will be reconvened in accordance with the attached Notice of Hearing documents;
- **I order** the tenant must serve the landlord with her original Application for Dispute Resolution and any evidence she intends to rely upon immediately upon receipt of this decision;

- **I order** that this not an opportunity for the tenant to amend her existing Application for Dispute Resolution;
- **I order** that this not an opportunity for either party to submit an additional Application for Dispute Resolution to be crossed or joined with the tenant's Application for Dispute Resolution currently before me;
- **I order** that this is not an opportunity for tenant to submit additional evidence;
- **I order** the landlord may submit any evidence in response to the tenant's Application that he intends to rely upon, as soon as possible and at least 7 days prior to the reconvened hearing, in accordance with the Residential Tenancy Branch Rules of Procedure.

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 09, 2016

Corrected: November 24, 2016

Residential Tenancy Branch