



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, OLC, O

Introduction

This hearing was set for a telephone conference call at 11:00 a.m., in response to the Tenant's Application for Dispute Resolution (the "Application") for the following reasons: to cancel a notice to end tenancy for the Landlord's use of the property; for the Landlord to comply with the *Manufactured Home Park Tenancy Act*; and for "Other" issues.

The Landlord named on the Application appeared for the hearing along with legal counsel for the Landlord. Despite the line being left open for 21 minutes, there was no appearance for the Tenant.

Legal counsel confirmed that the tenancy had ended because the Landlord had obtained an Order of Possession in a hearing conducted on September 28, 2017, which heard the Landlord's Application to end the tenancy early. The Landlord was issued with an Order of Possession dated October 5, 2017. I note that findings in that hearing, which the Tenant took part in, were made under the *Residential Tenancy Act*.

Analysis & Conclusion

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not appear for this hearing and parties for the Landlord appeared and confirmed that this tenancy had ended, I dismissed the Tenant's Application without leave to reapply.

Legal counsel requested that the second respondent on the Application was not the party named on the tenancy agreement in this dispute and asked for this party to be removed from the Application. Pursuant to my authority under Section 64(3) (c) of the

Residential Tenancy Act, I removed the second respondent as I find there no prejudice or disadvantage to the Tenant as this tenancy has now ended and this matter is closed.

The parties remained on the line after the hearing had been concluded to obtain information about their rights and obligations under the *Residential Tenancy Act*. In particular I provided the parties information regarding Rule 5 of the Residential Tenancy Branch Rules of Procedure, which I have reproduced below:

Rule 5 – Before the hearing

5.0.1 Withdrawal of an Application for Dispute Resolution

How to withdraw an application for dispute resolution

An applicant may withdraw an application for dispute resolution by notifying the Residential Tenancy Branch and providing a legible copy of any required documents, in one of the following ways:

- any time before the hearing, withdrawing the application through the Online Application for Dispute Resolution and either emailing any required documents to HSRTTO@gov.bc.ca including the file number in the subject line (“Withdrawal documents: file #”) or providing hard copies of any required documents to any Service BC Office or the Residential Tenancy Branch Office. Applications to dispute a notice to end tenancy or for adjourned hearings or review hearings may not be withdrawn online;
- any time before the hearing, notifying the Residential Tenancy Branch by telephone and providing hard copies of any required documents to any Service BC Office or the Residential Tenancy Branch Office;
- any time before the hearing, attending any Service BC Office or the Residential Tenancy Branch Office in person and providing a copy of any required documents; or
- at least one week before the scheduled hearing, emailing the Residential Tenancy Branch at HSRTTO@gov.bc.ca, including the file number in the subject line (“Withdrawal: file #”), and attaching a copy of the required documents, if any.

If your dispute resolution hearing is scheduled for less than one week away, the email may not be processed before the scheduled hearing, which could result in an arbitrator making a final and binding decision in the matter. If your dispute resolution hearing is scheduled for less than one week away, contact the Residential Tenancy Branch by phone or visit any Service BC Office or the Residential Tenancy Branch Office in person.

Withdrawing an application to dispute a notice to end tenancy

Where a tenant has applied to dispute a landlord’s notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application.

Required documents:

- the respondent landlord’s written consent to the withdrawal

Withdrawing an application after the hearing has begun and is adjourned

Where a participatory hearing (a hearing that is scheduled to take place in person, by telephone or by videoconference) has begun but is adjourned by an arbitrator for continuation at a later date, a party seeking to withdraw that application must provide evidence of the other party's consent to the withdrawal and that the parties have resolved all matters at issue in the application through a written agreement, such that continuation of the hearing is no longer necessary.

Although the arbitrator will issue a final decision in the matter under Rule 8.7 [*Original decision*], no orders reflecting the terms of the settlement will be issued under Rule 8.4 [*Decision and orders based on settlement*].

Required documents:

- the other party's written consent to the withdrawal
- the written agreement signed by both parties, setting out the parties' agreed resolutions to each of the matters at issue in the application

Withdrawing a review hearing

If a review hearing has been granted, the party who made the Application for Review Consideration may withdraw the review hearing at any time before the scheduled review hearing. Required documents:

- where the decision or order at issue relates to a notice to end tenancy, the other party's written consent to the withdrawal of the application

Withdrawing all other types of applications

In all other circumstances, where possible the applicant must provide the other party with written notice of the withdrawal of their application for dispute resolution.

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 26, 2017

Residential Tenancy Branch