



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF; CNR, CNC, OLC, FF

Introduction

This hearing dealt with landlord MM's ("landlord") application against the tenant, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for her application, pursuant to section 55.

This hearing also dealt with the tenant's cross-application against both landlords, pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The landlord and the tenant did not attend this hearing, which lasted approximately 20 minutes. "Landlord JL" and both landlords' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords' agent confirmed that he was the property manager for this rental unit and that his wife, landlord JL, was the manager for this rental unit. He said that landlord JL had difficulty speaking English so he had permission to speak on her behalf at this hearing. He also confirmed that he had authority to speak on behalf of the landlord, the owner of this rental unit, at this hearing.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: 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.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel notices to end tenancy, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*. The landlord also applied for an order of possession for unpaid rent.

The landlords' agent testified that the landlord did not require an order of possession against the tenant because the tenant had already vacated the rental unit. Therefore, I do not issue an order of possession to the landlord.

The landlords' agent confirmed that he still wanted to recover the \$100.00 filing fee paid for this current application by the landlord.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the landlord's application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for her current application. The landlord must bear the cost of this filing fee.

Preliminary Issue – Inappropriate Behaviour by the Landlords' Agent during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

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.

This hearing began at 11:00 a.m. and ended at 11:20 a.m. At the outset of the hearing, I asked the landlords' agent to remove his telephone from speakerphone because it causes echoing and feedback during the conference. He confirmed that he appeared in previous hearings before me where the speakerphone was an issue. He stated that he was removing his speakerphone "under protest" and would be letting the RTB know about it after the hearing. I encouraged him to do so but explained that I needed to be able to properly hear during the conference in order to conduct the hearing and the speakerphone interfered with that ability.

I notified the landlords' agent that he could hand his telephone to landlord JL if she wanted to make any submissions, or she could use another telephone handset on the same line, or she could call in on a different telephone line in order to listen and provide submissions. During the hearing, the landlords' agent confirmed that he told landlord JL not to use another handset because it would cause feedback. I notified the landlords' agent that I had provided three other options to him in order for landlord JL to participate in the conference and he refused all three options.

Throughout the hearing, the landlords' agent continuously interrupted me and became upset by my questions, often arguing and debating issues rather than answering my questions. He stated that I had been "barb" with him in previous hearings. When I asked him whether the previous hearings were related to this tenancy, he claimed that they were not. He stated that he was a witness in one of the previous hearings.

During the hearing, the landlords' agent requested the filing fee from a previous direct request application and a monetary order for unpaid November 2017 rent. He stated that the RTB ruined his direct request application and he had paid \$200.00 in application filing fees while the tenant just moved out and did not have any basis to contest the landlord's notices to end tenancy.

When I notified the landlords' agent that I could not deal with a previous hearing's application filing fee and the landlord had not applied for a monetary order for unpaid rent, he became upset. I informed him that I could not deal with the previous direct request application because it was not an application properly before me. When I notified him that he could speak to a lawyer or a legal advocate to pursue a monetary claim for unpaid rent in the future if he wished to do so, he stated that he was offended by my suggestion because he had been a Court sheriff for 34 years and knew what he was doing. He then asked for my name again, after I had already provided it to him at the beginning of this hearing, so I responded by providing it to him again with the spelling.

I caution the landlords' agent not to engage in the same rude, inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the landlords' agent.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's entire application is dismissed without leave to reapply.

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: December 11, 2017

Residential Tenancy Branch