



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' Application: CNC

Landlord's Application: OPC MNDL FFL

Introduction

This hearing dealt with applications from both the tenants and the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The tenants applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*.

The landlord applied for:

- an Order of Possession for Cause pursuant to section 55 of the *Act*;
- a monetary order for damages pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

The landlord's agent J.P., and assistant H.H. (herein referred to as "the landlord") attended on behalf of the landlord at the date and time set for the hearing of both Applications. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:59 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the 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 reapply.

Therefore, in the absence of the tenants' attendance at this hearing, I order the tenants' application in its entirety dismissed without liberty to reapply.

Preliminary Issue – Tenancy Ended

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

At the outset of the hearing, the landlord confirmed that the tenants no longer reside in the rental property. The tenants vacated the rental property between September 6 and 12, 2018, returning vacant possession to the landlord as of September 12, 2018.

Therefore, the landlord's Application for an Order of Possession is dismissed without leave to reapply as it is no longer required.

Preliminary Issue – Service of Evidence

The landlord originally applied on August 30, 2018 for an Order of Possession. The landlord confirmed that on September 25, 2018 they applied for an Amendment to their original Application for Dispute Resolution to add a monetary claim. The landlord also applied for Substituted Service authorization to be able to serve the Amendment to the tenants by email as the tenants had vacated the rental unit without providing a forwarding address or any other means of contact.

The landlord was successful in receiving an order for Substituted Service in order to email the Amendment to the tenants. The landlord uploaded a copy of the Substituted Service order decision dated October 3, 2018 into evidence. The landlord emailed the Amendment to the tenants on October 3, 2018. The Substituted Service order set out the following requirements:

I order that documents served in this manner have been sufficiently served to the

tenants for the purposes of the Act, three days after the date that the email is sent by the landlord to the tenants.

I further order that the landlord remains obligated to adhere to the timelines for service of evidence as set out in the Residential Tenancy Branch Rules of Procedure.

In accordance with the direction provided in the Substituted Service order, I find that the tenants were deemed served with the Amendment and supporting evidence on October 6, 2018, the third day after the email was sent to them by the landlord.

Rule 4.6 of the Residential Tenancy Branch Rules of Procedure explains the requirement for an applicant to serve an Amendment and supporting evidence not less than 14 days before the hearing, as follows:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure. The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

As the hearing for this matter was scheduled on October 12, 2018, and the tenants are deemed to have been served with the landlord's Amendment and evidence on October 6, 2018, the landlord has not met the 14-day timeline requirement under Rule 4.6.

Therefore, I have dismissed the landlord's Amendment application for a monetary award, with liberty to reapply, due to the failure to meet the service timelines set out in the Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages caused by the tenants through non-compliance with the *Act*, regulations or tenancy agreement?

Conclusion

The tenants' Application is dismissed in its entirety without leave to reapply.

The landlord's Application for an Order of Possession and for recovery of the filing fee is dismissed without leave to reapply.

The landlord's Amendment to the Application for Dispute Resolution for a monetary award for damage is dismissed with 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: October 12, 2018

Residential Tenancy Branch