



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord alleged that the tenant owed the landlord monetary compensation for unpaid rent and damage to the rental unit. The landlord claimed to have filed an application with the Residential Tenancy Branch for monetary compensation. However, there is not record of Application for Dispute Resolution filed on behalf of the landlord. Furthermore, the file number provided by the landlord is the same file number as the application herein by the tenant.

Preliminary Matter – Non-Appearance of Tenants at the Hearing

Furthermore, the applicant tenants did not appear at the hearing. Rule 7.3 of the *Residential Tenancy Branch 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.

As the applicant tenant did not attend the hearing, and in the absence of any evidence or submissions, I order the tenant's application be dismissed without leave to re-file.

The landlord testified that the tenant has already vacated the rental unit. Accordingly, I am not making an order of possession pursuant to pursuant to section 62(4) of the *Act* because the issue of possession is no longer in dispute.

Preliminary Matter – Application by Landlord for Monetary Compensation for Unpaid Rent and Damage to the Rental Unit

The landlord made a request for monetary compensation for unpaid rent and damage to the rental unit. *Residential Tenancy Branch Rules of Procedure*, Rule 2.1 states that:

2.1 Starting an Application for Dispute Resolution To make a claim, a person must complete and submit an Application for Dispute Resolution.

Further, *Residential Tenancy Branch Rules of Procedure*, Rule 2.11 states that:

2.11 Filing an Application for Dispute Resolution to counter a claim

To respond to an existing, related Application for Dispute Resolution, respondents may make a cross-application by filing their own Application for Dispute Resolution.

The issues identified in the cross-application must be related to the issues identified in the application being countered or responded to.

A party submitting a cross-application is considered the cross-applicant and must apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [Documents that must be served with the Notice of Dispute Resolution Proceeding Package] not

less than 14 days before the hearing and so that the service provisions in Rule 3.15 [Respondent's evidence provided in single package] can be met.

Based upon the lack of a record of the filing of an Application for Dispute Resolution by the landlord and the landlord's inability to produce a separate file number, I find that the landlord did not file an Application for Dispute Resolution to commence a claim as required by *Residential Tenancy Branch Rules of Procedure*, Rules 2.1 and 2.11. Accordingly, I will not consider the landlord's request for monetary compensation in this hearing. The landlord is at liberty to file an application for monetary compensation but this decision does not extend any deadlines established pursuant to the *Residential Tenancy Act* or the *Limitation Act*.

Conclusion

I order the tenant's application be dismissed without leave to re-file.

The landlord's request for monetary compensation is not considered in this hearing. The landlord is at liberty to file an application for monetary compensation but this decision does not extend any deadlines established pursuant to the *Residential Tenancy Act* or the *Limitation 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: July 18, 2019

Residential Tenancy Branch