



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, LAT, LRE, OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on August 26, 2019 wherein the Tenant sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- an order for more time to make an application pursuant to section 66(1);
- an Order allowing the Tenant to change the locks on the rental unit;
- an Order restricting the Landlord's right to enter the rental unit,
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and,
- recovery of the filing fee;

The hearing of the Tenant's Application was scheduled for teleconference at 9:30 a.m. on October 28, 2019. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 9:55 a.m. I confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he personally served the Landlord with the Notice of Hearing and the Application "by the deadline". He was not able to confirm when he served the Landlord, although he claimed a friend witnessed service. As I was not able to confirm service of the Tenant's Application materials and Notice of Hearing, I was not satisfied the Landlord given legal notice of the proceedings.

One of the principles of natural justice is that a party to a dispute must be provided notice of any proceedings, an opportunity to review and respond to any evidence filed against them, and an opportunity to appear at any hearing of the matter. This principle is enshrined in the *Residential Tenancy Act* and the *Residential Tenancy Branch Rules of Procedure*. To proceed with the hearing without proper notice would have denied the Landlord a fair opportunity to be heard.

Although I found the Landlord was not served, I also point out that the Tenant also testified that he was no longer in the rental unit. He stated that on September 13, 2019 the Landlord moved all of his personal items out on to the street. He confirmed that although he did not agree with the Landlord's actions, he was not seeking an Order of Possession of the rental unit; rather, he wanted return of his security and pet damage deposit, return of his personal possessions, and monetary compensation from the Landlord for damage to his personal possessions as well as losses incurred when the Landlord removed his items from the rental unit. That relief was not claimed on the Tenant's Application before me.

As the tenancy has ended, the Tenant's Application filed August 26, 2019 was no longer applicable as the relief claimed related to a continuation of the tenancy. The Tenant's Application is therefore dismissed.

The Tenant is at liberty to reapply for orders relating to return of his security deposit, return of his personal possessions and monetary compensation from the Landlord pursuant to section 67 of the *Act*.

A review of branch records indicates the Tenant filed digital evidence in support of his claim five days prior to the hearing. The Tenant is reminded that he must comply with the *Act*, and the *Residential Tenancy Branch Rules of Procedure* with respect to service of his application materials as well as the submission and service of evidence. Part 6 of the *Residential Tenancy Act* deals with service of documents. *Residential Tenancy Branch Rules 3.1* and *3.14* also provide as follows:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

As discussed during the hearing, the Tenant is further reminded that, pursuant to section 38 of the *Act*, his right to return of the security and pet damage deposit is not triggered until he provides the Landlord with a written request for return of the deposit and a forwarding address to which the deposit is to be sent.

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 28, 2019