



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL, FFL // CNC

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an Order of Possession for a breach of a material term of the tenancy pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$3,400 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. The tenant and his father (“**MS**”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, his father, and I were the only ones who had called into this teleconference.

Preliminary Issue – Landlord’s Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord bears the burden of proof in both applications. As he failed to attend the hearing, I find that he has failed to discharge his evidentiary burden to prove that he is entitled to the orders sought, and that the Notice was validly issued. Pursuant to Rule of Procedure 7.4, he must attend the hearing and present his evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the landlord to the Residential Tenancy Branch in advance of the hearing.

I dismiss his claim, without leave to reapply. I order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

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: March 13, 2020

Residential Tenancy Branch