



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC
 MNRL, FFL

Introduction

This hearing convened as a result of Cross Applications. In the Tenants' Application, filed on December 27, 2020, they sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, which according to their application was served on December 25, 2020 (the "Notice") as well as an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement. In the Landlord's Application, filed on January 17, 2021, the Landlord sought monetary compensation for unpaid rent and recovery of the filing fee.

The hearing of the parties' cross applications was scheduled for 9:30 a.m. on March 23, 2021. The line remained open until 9:44 a.m. and the only participant who called into the hearing during this time was the Landlord. 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 Landlord and I were the only ones who had called into this teleconference.

Tenants' Application: Analysis and Conclusion

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rules 7.1, 7.3 and 7.4 address the requirement of a party to call into the teleconference hearing and read as follows:

7.1 Commencement of Hearing

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Tenants bear the burden of proving their claim on a balance of probabilities. In the absence of any evidence or submissions from the Tenants and in the absence of the Tenants' participation in this hearing, **I dismiss the Tenants' claim without leave to reapply.**

I also note the following. On January 15, 2021, the Landlord obtained an Order of Possession and a Monetary Order for unpaid rent for the December 15-31, 2020 time period. (The file number for that matter is included on the unpublished cover page of this my Decision.) Accordingly, the tenancy has already ended pursuant to the prior Decision. During the hearing before me Landlord also stated that he did not issue another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as claimed by the Tenant on her Application. In any event, the tenancy has ended such that the relief sought by the Tenants is no longer relevant.

Landlord's Application: Analysis and Conclusion

As the Tenant failed to call into the hearing, I considered service of the Landlord's Application materials. The Landlord testified that he did not serve the Tenants with notice of his Application as they moved from the rental unit on January 19, 2021 and did not provide a forwarding address. The Landlord also stated that he did not serve the Tenants with the Notice of Hearing nor did he serve the Tenants with his Application as he believed the scheduling of the Tenants' Application was sufficient to ensure their attendance.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* provides 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*].

Section 89 of the *Residential Tenancy Act* provides as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Tenants failed to call into the hearing of their Application, however, it is likely they were unaware that the Landlord had also filed an Application to be heard at the same time. As the Landlord failed to serve the Tenants in accordance with the *Rules* and the *Act*, the Tenants were not given notice of the hearing of the Landlord's Application. One

of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them and an opportunity to attend the hearing and make submissions in defense of the claims made. The *Act* contains specific rules about service in section 89 to ensure that this principle is observed; to proceed without adequate notice to the Tenants would offend this principle and would deny the Tenants a fair opportunity to be heard on the merits of the Landlord's claim.

I therefore dismiss the Landlords' Application with leave to reapply.

The Landlord also stated that he wished to pursue compensation from the Tenants for junk removal as well as cleaning and repair costs to the rental unit; these claims were not included on the Landlord's Application, nor did he file a formal Amendment seeking such relief. The Landlord is at liberty to reapply for compensation for repairs and cleaning as well as authority to retain the Tenants' security and pet damage deposits.

This Decision does not extend any applicable time limits under the *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: March 23, 2021

Residential Tenancy Branch