



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, CNR, LRE, OLC, MNDCT, FFT

Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit in the amount of \$323.85 pursuant to section 33;
- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$13,200 pursuant to section 67;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 11:13 am in order to enable the landlords to call into this teleconference hearing scheduled for 11:00 am. Tenant WD 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 WD and I were the only ones who had called into this teleconference.

Despite not attending the hearing, the landlords uploaded evidence to the Residential Tenancy Branch dispute management website. Based on this, I am satisfied that the landlords are aware of the hearing, however, I am unsure as to why they did not attend.

Preliminary Issue – Partial Withdrawal of Tenants' Application

At the outset of the hearing, WD stated that he would like to withdraw all parts of the tenants' application, except the portion disputing the Notice. As the landlords did not attend the hearing, and as I have found they were aware the hearing was taking place, I find that the landlords are not prejudiced by the tenants' withdrawal. As such, I dismiss all

parts of the tenants' application, except for the part seeking the cancellation of the Notice, with leave to reapply.

Preliminary Issue – Effect of Landlords' 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, despite this being the tenants' application, the landlords bear the onus to prove it is more likely than not that the Notice is valid. By not attending the hearing, the landlords were unable to discharge this evidentiary burden. As the landlords did not attend the hearing, per Rule of Procedure 7.4, I decline to consider the evidence the landlord uploaded in advance of the hearing. I also note that neither party uploaded a copy of the Notice to the Resident Tenancy Branch evidence intake system in advance of the hearing, so, even if I did consider the evidence provided by the landlord, I would not have been able to determine if the Notice met with the form and content requirements set out at section 52 of the Act.

As such, 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: September 13, 2021

Residential Tenancy Branch