



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL, MNRL, FFL, CNC, OLC

Introduction

The Landlord applies for an order for possession pursuant to s. 47 of the *Residential Tenancy Act* (the “*Act*”) after serving a One-Month Notice to End Tenancy on the Tenant for repeatedly late rent payments. The Landlord also seeks monetary orders for damages and unpaid rent under s. 67 of the *Act* as well as return of their filing fee pursuant to s. 72.

The Tenant brought an application to cancel the One-Month Notice to End Tenancy and sought an order that the Landlord comply with the *Act*.

L.R. and R.M. appeared as agents for the Landlord. The Tenant did not appear, nor did anyone appear on her behalf. Pursuant to Rules 7.1 and 7.3 of the Rules of Procedure, the hearing was conducted in the Tenant’s absence.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised that they served the Tenant with the Notice of Dispute Resolution and their evidence by way of registered mail, sent on June 21, 2021. They further advised that the application materials were posted to the Tenant’s door on June 21, 2021 as well. I find that the Notice of Dispute Resolution and evidence were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant to have been served on June 24, 2021.

Preliminary Issue – Landlord's Application

At the outset of the hearing, the Landlord advised that they had obtained an order for possession as a result of a separate application to the Residential Tenancy Branch, which was effective on September 19, 2021. The Landlord advised that the Tenant continues to reside in the rental unit and they have withheld enforcement of the order for possession until September 30, 2021 as a courtesy to the Tenant. Given that the Landlord has already received an order for possession, that portion of their claim is now moot. I hereby dismiss the Landlord's application for an order for possession without leave to reapply.

The Landlord also sought a monetary order for damages caused by the Tenant. The Tenant continues to reside in the rental unit and, as such, no move out inspection report could be provided. An additional claim for compensation for damages caused by the Tenant may very well be made after the Tenant moves-out of the rental unit and the process contemplated by s. 38 of the *Act* would have to be considered. Further, I find that the issue of damage to property is not sufficiently linked to the central aspect of the Landlord's application, which relates to the One-Month Notice to End Tenancy issued for unpaid rent. Given this and pursuant to Rule 2.3 of the Rules of Procedure, I hereby dismiss the Landlord's claim for compensation for damages.

The final aspect of the Landlord's application, a claim for unpaid rent, was canvassed during the hearing. The Landlord was unable to provide sufficiently clear evidence to me with respect to their claim for unpaid rent. Upon pressing the Landlord's agents with respect to my concerns, the Landlord decided to withdraw their claim for unpaid rent at the hearing. I accepted the Landlord withdrawing this portion of their claim. Accordingly, I hereby dismiss the Landlord's claim for unpaid rent with leave to reapply.

Preliminary Issue – Tenant's Application

The Tenant's application was made on June 10, 2021 and had been rescheduled so that it occurred on October 4, 2021 at 1:30 PM to coincide with the Landlord's application. I confirmed that the rescheduled notice was provided to the Tenant and that it contained the correct dial-in information. The hearing commenced without the Tenant's participation and concluded after approximately 20 minutes. The Tenant failed to appear. Pursuant to Rule 7.3 of the Rules of Procedure, I hereby dismiss the Tenant's application. Given that the tenancy is at an end by virtue of the order for possession of

September 19, 2021 and the nature of the relief sought by the Tenant, I dismiss the Tenant's application without leave to reapply.

Conclusion

With respect to the Landlord's application, I make the following orders:

- The Landlord's order for possession is dismissed without leave to reapply.
- The Landlord's claim for compensation for damages caused by the Tenant are dismissed with leave to reapply.
- The Landlord's claim for unpaid rent is withdrawn by the Landlord and is dismissed with leave to reapply.

The Tenant's application is dismissed without leave to reapply in its entirety.

Given that the Landlord's application was dismissed, it is not appropriate to exercise my discretion under s. 72 of the *Act* and order the return of their filing fee. I dismiss the Landlord's request for return of their filing fee without leave to reapply.

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 13, 2021

Residential Tenancy Branch