



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on September 01, 2021 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")
- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

Hearing

The Tenant appeared at the hearing as scheduled at 9:30 a.m. The Landlord did not appear at the hearing at 9:30 a.m. I put the Tenant on hold and waited for 10 minutes to allow the Landlord to call into the hearing. The Landlord did not call into the hearing within the 10 minutes. I was advising the Tenant that I would dismiss the Application without leave to re-apply because the Applicant Landlord did not appear when the Landlord called into the hearing. I proceeded to hear from the Landlord in relation to the Application.

Withdrawal

The Tenant advised that they vacated the rental unit November 30, 2021. The Landlord confirmed that the Tenant had vacated the rental unit.

I asked the Landlord what their intention was in relation to the Application given the Tenant had vacated the rental unit. The Landlord withdrew the claims, other than the request for compensation for damage caused by the tenant, their pets or guests to the unit or property. The Landlord sought to proceed with the request for compensation for damage based on the Tenant leaving garbage in the rental unit at the end of the tenancy and having to remove this at a cost of \$600.00 or \$700.00.

I told the Landlord I had concerns about proceeding with the request for compensation for damage given the Application was made prior to the end of the tenancy and states that the Landlord is seeking \$500.00 on the following basis:

Tenant didn't give access recently to inspect inside the property so **I don't know if there are any damages** to the property. I am also **suspecting** that tenant won't remove all of her belongings which I will have to disposed off at her cost.
(emphasis added)

I told the Landlord that a claim for compensation owing at the end of the tenancy should not be made prior to the tenancy ending and that the claim should clearly set out the basis for the compensation sought and the amount claimed. I told the Landlord I could not consider awarding more than the \$500.00 sought in the Application (see Rule 6.2 of the Rules of Procedure). I also pointed out that there is no documentary evidence relating to this claim before me. I told the Landlord they could proceed with the claim or withdraw the claim and re-file providing the necessary information, subject to me hearing from the Tenant on these points. The Landlord sought to withdraw the claim.

I heard the Tenant on the issue of the Landlord withdrawing the claim for compensation for damage. The Tenant objected to the claim being withdrawn. I asked the Tenant what prejudice or unfairness was caused to them by me allowing the Landlord to withdraw the claim. The Tenant stated that this would put the issue "on the back burner", they want it dealt with today, the Landlord should have been ready to deal with the issue today and they do not want further time wasted on the issue.

I allowed the Landlord to withdraw the claim for compensation for damage for the following reasons.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), the Application should not have included both a request for an Order of Possession based on the Notice and claims for compensation because these issues are not related.

The Landlord should not have filed an anticipatory claim based on damages that may occur in the future. The Landlord should have waited until the end of the tenancy and filed a claim for compensation once they were aware of what damages, if any, there were to the rental unit or property.

An application for compensation should reflect the correct amount being claimed and clearly set out the basis for the requested amount (see section 59(2)(b) of the *Residential Tenancy Act*). Here, the basis for the amount claimed is not clear because it is anticipatory and there is no documentary evidence submitted in relation to the claim from which one could determine the basis for the amount sought.

I acknowledge that the Tenant wanted to have this matter dealt with as soon as possible; however, I do not find there is prejudice or unfairness in allowing the Landlord to withdraw the claim for compensation for damage because it is an application for a monetary order and not related to a security deposit. I do not find the claim for compensation for damage to be an urgent matter and do not find it unfair to allow the Landlord to withdraw the claim and possibly re-file it in which case the parties and arbitrator will have a clear understanding of the basis for the claim and amount sought, both parties can submit relevant evidence and the matter can be fully and properly heard before an arbitrator.

I told the parties I would allow the Landlord to withdraw the request for compensation for damage. The Landlord confirmed they are withdrawing all claims in the Application.

The Application is withdrawn at the request of the Landlord.

Procedural Issue

At the end of the hearing, the Tenant took issue with me proceeding and allowing the Landlord to withdraw the Application when the Landlord did not call into the hearing within 10 minutes of the start of the hearing and I had told the Tenant the Application would be dismissed without leave to re-apply.

As stated to the Tenant, I proceeded to hear from the Landlord because the Landlord called into the hearing while the line was still open and the Tenant and I were on the line.

Rules 8.1 and 8.3 of the Rules state:

8.1 Ending the dispute resolution hearing

The arbitrator determines when the hearing has ended.

The arbitrator has the discretion to receive additional evidence after the hearing has ended.

8.3 Concluding the dispute resolution proceeding

The proceeding concludes with the issuance of a final and binding written decision and/or order(s).

Although procedurally I waited 10 minutes at the outset of the hearing to allow the Applicant Landlord to call into the hearing, this does not mean that an applicant cannot be heard after the 10 minute mark. I have the discretion pursuant to rule 8.1 of the Rules to decide when the hearing has ended and I do not consider a hearing ended until I have ended the teleconference and hung up the phone. Here, the Landlord called into the hearing prior to me ending the teleconference and therefore called in prior to the end of the hearing. There was no valid reason for me to not hear from the Landlord in the circumstances.

Further, pursuant to rule 8.3 of the Rules, the proceeding does not conclude until a final and binding written decision is issued. At the time the Landlord called into the hearing, I had not issued a final and binding written decision as the hearing itself was still taking place. It was open to me to continue with the hearing, not dismiss the Application without leave to re-apply on the basis that the Applicant Landlord did not appear and hear from the Landlord. I find it would have been unreasonable to dismiss the Application without leave to re-apply on the basis that the Applicant Landlord did not appear at the hearing when the Landlord did appear at the hearing prior to the hearing ending.

Conclusion

The Application is withdrawn at the request of the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 14, 2022

Residential Tenancy Branch