Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

This hearing was conducted in response to the Tenant's Application for an emergency hearing pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession of the rental unit pursuant to section 54;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Counsel (ST) and a director (DR) for the company attended on behalf of the landlord. The tenants (SV & CV) and their advocate (TK) attended the hearing. The tenants confirmed that their agent had authority to speak on their behalf at the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant advocate, TK, testified she served the landlord's then counsel (SA) with the Notice of Dispute Resolution form and initial evidence package directly to (SA) by email on March 22, 2022, as agreed to by the parties, in writing. TK was then directed to send additional information to SA's paralegal. SA subsequently left the law firm and ST took over as lead counsel. TK stated that the documents were sent to three (3) different email addresses within the law firm: to the initial lawyer who left the firm, to the lawyer's assistant, and most recently (as of Friday past) the tenants were only made aware of current counsel.

Counsel for the landlords stated that while the Notice of Dispute Resolution form was submitted there was no accompanying evidence and the evidence trickled in, the last part of the evidence delivered on Friday, April 8. Counsel stated there was insufficient time to review the tenants' recent documents and the late evidence prejudices the landlord's ability to respond; however, if the tenants stipulate to the rent cheques issued to the landlord, counsel is prepared to proceed.

Counsel stated that the tenant refused the to accept the documents from the process server. The documents were then sent by email to TK. Initially, TK stated she had not received the respondent's evidence but upon further discussion and clarification, TK confirmed that the landlord's evidence was received by email.

Rule 10.2 "Applicant's evidence for an expedited hearing" as found in the Residential Tenancy Branch Rules of Procedure states as follows:

> An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

The rules of the exchange of evidence ensure that the hearing procedure is fair to both parties. In other words, people affected by the decision must be told about the important issues and be given enough information to be able to participate meaningfully in the decision-making process and the people affected are given a reasonable opportunity to present their point of view and to respond to facts presented by others.

Reviewing the "Proof of Service Form" dated March 22, 2022, I note the tenants did not submit an itemized inventory of the evidence sent to counsel. Notwithstanding having said that, the Proof of Service Form does not require this information. Considering the multiple email addresses, change of counsel, and instructions to send further information to the paralegal at the law firm, I find on a balance of probabilities that the tenants' advocate more likely than not submitted the complete Notice of Dispute Resolution package to counsel as required. However, the tenants did not provide the additional evidence they planned to rely on in the hearing to counsel in a timely manner and although counsel requested the tenants stipulate to the rent cheques, but they did not do so; therefore, the late evidence is excluded.

At the outset, I advised the parties of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing. I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue #1: Amending an Application for an Expedited Hearing.

Residential Tenancy Policy Guideline #51 outlines what can be considered in expedited hearings.

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response times. Expedited hearings are usually limited to applications for dispute resolution for:

- an early end to tenancy under s. 56 or the RTA and s. 49 of the MHPTA;
- an order of possession for a tenant under s. 54 of the RTA and s. 47 of the MHPTA, or
- emergency repairs under s. 33 of the RTA and s. 27 of the MHPTA.

No other applications are usually considered for an expedited hearing, however there are rare circumstances where an application other than one of those listed above may be set down for an expedited hearing.

As a result, Residential Tenancy Policy Guideline #51 limits the director's authority to amend an application submitted for an expedited hearing. Only minor amendments to an application may be made at the hearing. The guideline reads in part:

Except where required in the circumstances, an expedited hearing is not a way to bypass normal service and response time limits to get a quicker hearing. Therefore, once an application for an expedited hearing is made, it cannot be amended except at the hearing with the permission of the arbitrator.

This is to prevent applicants from "queue jumping", for example, by applying for emergency repairs and then amending the application to request repairs for the replacement of a fridge or oven which is not considered an emergency. Another example is applying for an early end to the tenancy and then attempting to amend the application for an order of possession for unpaid rent and a monetary order for unpaid rent. These types of applications are not appropriate for the expedited hearing process.

At an expedited hearing, an attempt to amend an expedited hearing application from a request for emergency repairs to regular repairs or from an early end to tenancy to a request for an order of possession for unpaid rent will almost always result in the arbitrator dismissing the application and the applicant having to start the application process over from the beginning.

At the outset I asked the tenant if the property was used for residential purposes or commercial. The tenant stated residential. Counsel also raised the issue of jurisdiction. The tenant's advocate asked what evidence would be required to prove jurisdiction as the tenancy agreement was 'on a handshake from 20 years ago'. I explained that oral evidence, witness testimony etc. is evidence. Other information such as income tax information, rent payment information may also support a jurisdictional argument.

Determining jurisdiction is not an issue that meets the criteria for an expedited hearing. The matter of jurisdiction must be decided before the merits of an application can be considered. Jurisdiction identifies the most appropriate forum for the dispute resolution.

Notwithstanding the above, even if the tenants are successful on the matter of jurisdiction because the property is currently tenanted, the remedy sought, an order of possession, cannot be granted. Residential Tenancy Policy Guideline 51 "Expedited Hearings" reads in part:

> Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another

renter is occupying the rental unit; however, the tenant may file a separate application for monetary compensation from the landlord for any damage or loss, they may have suffered.

I dismiss the tenant's expedited application for an order of possession without leave to reapply. The tenants may file an application on the question of jurisdiction and for any claims allowed under the Act from the landlord for any damage or loss they incurred.

As the tenants' application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

The tenants' application is dismissed without leave to reapply.

At the hearing, the question of jurisdiction was introduced and must be resolved before the merits of any application can be determined. The tenants may file an application on the question of jurisdiction and for any claims allowed under the Act from the landlord for any damage or loss they incurred.

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: April 15, 2022

Residential Tenancy Branch