



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL; CNC, FFT

Introduction

This hearing dealt with the landlords' application, filed on January 29, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

This hearing also dealt with the tenant's application, filed on January 11, 2022, pursuant to the *Act* for

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated January 1, 2022 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 35 minutes. Landlord JC ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:35 a.m. I monitored the teleconference line throughout this hearing. 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 people who called into this teleconference.

The landlord provided his name and spelling. He confirmed the name and spelling of the other landlord KMC ("owner") named in this application. He said that the owner is his uncle and he had permission to speak on his behalf at this hearing (collectively

“landlords”). He provided his email address for me to send this decision to both landlords after the hearing. He confirmed that the owner owns the rental unit and provided the rental unit address.

At the outset of this hearing, I informed the landlord that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). The landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process and the potential outcomes and consequences to the landlord. He had an opportunity to ask questions, which I answered. I informed him that I could not provide legal advice to him. He did not make any adjournment or accommodation requests. He confirmed that he was ready to proceed with this hearing.

The landlord testified that the tenant was served with a copy of the landlords’ application for dispute resolution hearing package on February 10, 2022, by way of posting to the tenant’s rental unit door. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlords’ application on February 13, 2022, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords’ application to correct the spelling of the owner’s middle name. I amend the tenant’s application to correct the spelling of the landlord’s first name. The landlord consented to these amendments during this hearing. I find no prejudice to either party in making these amendments.

The landlord testified that the tenant was served with a copy of the landlords’ 1 Month notice on January 7, 2022, by way of posting to the tenant’s rental unit door. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlords’ 1 Month Notice on January 10, 2022, three days after its posting. In his application to dispute the 1 Month Notice, the tenant claimed that he received the landlords’ 1 Month Notice on January 7, 2022, on his door.

Preliminary Issue – Dismissal of Tenant’s Application

The landlord stated that the landlords did not receive a copy of the tenant’s application for dispute resolution hearing package.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

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.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 1 Month Notice, the landlords are entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Preliminary Issue – Particulars of Landlords' Application

The landlord confirmed that the landlords seek an order of possession for cause against the tenant, based on the 1 Month Notice.

The landlord stated that the landlords did not provide any documentary evidence for this hearing, aside from a copy of the 1 Month Notice and a photograph of the 1 Month Notice posted to the tenant's rental unit door. He said that the tenant was accused of sexual harassment and disturbing the quiet enjoyment of other tenants at the rental property. He claimed that there was no police report, no charges filed, no complaint information, no witness letters, or any other documentary evidence obtained or provided by the landlords for this hearing.

The landlord claimed that this was his first time at an RTB hearing and he did not know what evidence to submit for the hearing.

During this hearing, I provided the landlord with ample time of 35 minutes to look through all his documents and provide clear testimony and evidence, but he failed to do so.

The landlord stated that he was looking through his paperwork to determine when and how many times the tenant was repeatedly late paying rent during this tenancy. He agreed that this was one of the reasons provided by the landlords on the 1 Month Notice. The landlord said that he did not provide a copy of the rent ledger that he was looking through during this hearing and said it was confusing because it had other tenants' rent information on there, in addition to this tenant. The landlord started guessing the dates of late rent payment, claiming it was in April, May, June, September,

October, November, and December 2021. He then stated that he accepted the late rent payments from the tenant. He later claimed that he was unsure of the September or October late rent payments. He then stated there was no late rent in June or December. He further stated there was partial rent paid in September and April. The landlord continued guessing and repeatedly switching the above dates during this hearing.

Pursuant to section 59(2)(b) of the *Act*, an application must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide a tenant with notice and enough information to know the landlords' case so that the tenant can properly respond.

Rule 6.6 of the RTB *Rules* states the following (my emphasis added):

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.***

I find that the landlords did not provide sufficient details of their dispute or the 1 Month Notice, so that the tenant had notice to respond. I informed the landlord that I found his testimony to be unclear, confusing, and not supported by any documentary evidence. I find that the landlords failed to comply with section 59(2)(b) of the *Act* and Rule 6.6 of the RTB *Rules*, as noted above.

During this hearing, the landlord requested leave to reapply for the order of possession for cause. As the tenant did not attend this hearing, I find no prejudice to the tenant in granting the landlord's request, as the tenant will have an opportunity to respond, if the landlords reapply and serve the tenant with their application and evidence.

I informed the landlord that the landlords' application for an order of possession for cause was dismissed with leave to reapply. The landlords' application to recover the

\$100.00 filing fee is dismissed without leave to reapply. I notified the landlord that the landlords could file a new application and pay a new filing fee, if they want to pursue this matter in the future. He confirmed his understanding of same.

Conclusion

The tenant's entire application is dismissed without leave to reapply. The landlords are not issued an order of possession for cause against the tenant.

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlords' application for an order of possession for cause is dismissed with 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: April 11, 2022

Residential Tenancy Branch