



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) to seek an order cancelling a One Month Notice to End Tenancy for Cause dated January 27, 2022 (“1 Month Notice”) pursuant to section 47 of the Act.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:43 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. The Landlord and his wife (“SA”) attended the hearing and they were 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 Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that the Landlord, SA and I were the only ones who had called into this teleconference.

The Landlord acknowledged he received details of the Application from the Residential Tenancy Branch and wanted to continue with the hearing. I find the NDRP was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

The Landlord stated he did not serve any evidence on the Tenant.

Preliminary Matter – Correction of Rental Address

At the outset of the hearing, it was determined that the Tenant was residing in the basement at the rental address provided in the Application. The Landlord requested that I amend the Application to insert “Basement” as part of the rental address.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* (“Rules”) states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The request of the Landlord that I amend the Application to insert “Basement” as part of the rental address was reasonably foreseeable by the Tenant. As such, I amended the Application to insert “Basement” in front of the rental address provided by the Tenant in the Application pursuant to Rule 4.2 of the RoP.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rules 7.1 and 7.3 of the Rules state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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 the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the hearing before it concluded at 9:43 am, the Application is dismissed without leave to reapply. As the Tenant did not attend the

hearing, I will not consider any of his evidence except for the copy of the 1 Month Notice and tenancy agreement he submitted before this hearing.

Rule 6.6 of the Rules 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.

Notwithstanding I have dismissed the Application, the Landlord is required to prove cause for ending the tenancy pursuant to the 1 Month Notice. However, the Landlord stated the Tenant vacated the rental unit on February 27, 2022 and he was not seeking an Order of Possession pursuant to section 55 of the Act. As such, it was unnecessary for the Landlord to prove cause for ending the tenancy and I ended the hearing.

Conclusion

The Application is dismissed 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: May 23, 2022

Residential Tenancy Branch