



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR / CNL-4M

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”):

- 1) the landlord’s application for an order of possession to make renovations or repairs pursuant to section 49.2; and
- 2) the tenants’ application to cancel the landlord’s Four Month Notice to End Tenancy for Demolition or Conversion of Rental Unit (the “**Notice**”) pursuant to section 49.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the landlord to call into the hearing scheduled to start at 9:30 am. The tenants attended the hearing and was 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. I used the teleconference system to confirm that the tenants and I were the only ones who had called into the hearing.

Tenant TG testified she served that the landlord with the notice of dispute resolution package for the tenants’ application and supporting documentary evidence via registered mail on February 24, 2024. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with these documents on March 1, 2022, five days after TG mailed them, in accordance with sections 88, 89, and 90 of the Act.

Rule of Procedure 6.6 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.

As such, the landlord bears the onus in both applications.

As he did not attend the hearing, I find that he has failed to discharge his evidentiary burden to prove that he is entitled to the order sought in his application and the tenants are entitled to the relief sought in theirs (that is, the cancellation of the Notice). The landlord did not provide the Residential Tenancy Branch with any documentary evidence in advance of the hearing. In any event, Rule of Procedure 7.4, requires the landlord (or his agent) must attend the hearing and present his evidence for it to be considered.

Accordingly, I dismiss the landlord's application, without leave to reapply and I grant the tenants' application. The Notice is cancelled and of no force or effect. The tenancy shall continue.

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 31, 2022

Residential Tenancy Branch