



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, LRE, OT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order of \$600.00 for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70; and
- other unspecified relief.

The landlord's agent, the landlord's lawyer, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 27 minutes from 11:00 a.m. to 11:27 a.m.

All hearing participants confirmed their names and spelling.

The landlord's agent stated that she is the director of the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She said that the landlord owns the rental unit and provided the rental unit address. She confirmed that the landlord's lawyer had permission to represent the landlord.

The tenant provided her mailing address for me to send this decision to her after the hearing.

The tenant's agent initially identified himself as a witness at this hearing. When I informed him that witnesses are excluded from the outset of this hearing, as per the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"), he then claimed that he was no longer a witness. He said that he was a friend and the tenant's agent. The tenant confirmed that her agent had permission to speak on her behalf.

Rule 6.11 of the RTB *Rules* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord's agent, the landlord's lawyer, the tenant, and the tenant's agent all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them. Neither party made any adjournment or accommodation requests.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the name of the landlord's law firm as a landlord-respondent party. The tenant, the landlord's agent and the landlord's lawyer did not oppose this amendment during this hearing. They confirmed that the landlord's law firm is only an agent for the landlord, not a landlord, owner, or party involved in this tenancy. The landlord's lawyer confirmed that the name of the law firm has now changed.

Preliminary Issue – The Tenant's Application

At the outset of this hearing, the tenant claimed that she was ready to proceed with this hearing. I asked whether she was ready to proceed without her advocate, who the tenant claimed had a conflict of interest with the landlord's law firm and could not represent her at this hearing. The tenant then claimed that she did not want to go ahead with this hearing, and she wanted to delay it to a later date. She said that this application was complicated, and she needed to obtain legal advice and an advocate. She did not indicate how long this process would take. She did not request an adjournment at this hearing. The tenant provided a copy of a letter, dated June 20, 2022, from her advocate, indicating that she could not represent the tenant.

The landlord's lawyer stated that the landlord opposed a delay of this hearing to a later date. He stated that the RTB does not have jurisdiction to hear this application because it is a commercial tenancy. He said that he could proceed to a Court for a determination, but in the event that the RTB assumes jurisdiction, the landlord issued

notices to end tenancy for unpaid rent and cause and filed a future application regarding same.

The landlord's lawyer and the tenant confirmed that they did not provide a notice to end tenancy for cause on the approved RTB form, as evidence for this hearing. They confirmed that they only provided a letter, dated January 13, 2022, entitled "notice of eviction" on the letterhead of the landlord. They stated that they did not provide any other notices to end tenancy as evidence for this hearing, including for unpaid rent or cause.

I informed both parties that the tenant's application to cancel the 1 Month Notice was dismissed without leave to reapply. I notified them that neither party provided a notice to end tenancy for cause on an approved RTB form, as required by section 52 of the *Act*.

The following RTB *Rules* state (my emphasis added):

2.3 Related issues

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

The above *Rules* state that an Arbitrator may refuse to consider unrelated issues in an application. In this case, the tenant applied for four different claims in her application. I dismissed one of the four claims at this hearing. The tenant did not apply for a claim to determine jurisdiction at this hearing.

The tenant was provided with a priority hearing date, due to the urgent nature of her application to cancel a notice to end tenancy for cause. This is the main, central, urgent and important issue to be dealt with at this hearing. The remaining three claims in the tenant's application are non-urgent, lower priority issues.

I informed both parties that the remainder of the tenant's application for a monetary order of \$600.00 for compensation under the *Act, Regulation* or tenancy agreement, an order restricting the landlord's right to enter the rental unit, and other unspecified relief, was dismissed with leave to reapply. These claims are severed in accordance with RTB *Rules* 2.3 and 6.2, above.

I notified both parties that I would not determine whether the RTB has jurisdiction to decide the merits of the tenant's application at this hearing. The tenant did not apply for this relief in her application. The tenant confirmed that she was not ready to proceed with this hearing and that she required more time to obtain legal advice and an advocate. The landlord opposed a delay, but I find that the tenant is entitled to obtain legal representation, given that her advocate provided a letter from June 20, 2022, shortly prior to this hearing on June 30, 2022, that she could not represent the tenant.

I did not adjourn the hearing since neither party requested same. I do not find it appropriate to adjourn this hearing, as the tenant did not indicate how long it would take for her to find legal representation. The tenant's agent claimed that the tenant's previous legal advocate was the only place providing assistance within walking distance of the tenant.

Throughout this hearing, the tenant's agent repeatedly interrupted me and spoke at the same time as me. I cautioned him but he continued with this behaviour. After I verbally provided my decision to both parties during this hearing, the tenant's agent became upset. He repeatedly asked me the same questions, argued with me about my decision, asked me for legal advice, and argued the merits of the tenant's application. I repeatedly cautioned him about the above behaviour and informed him that I could not provide legal advice, as my role as an Arbitrator was to make a decision regarding this application, which was already made. I repeated my decision to him and the reasons for same numerous times and cautioned him about his behaviour, but he continued with same.

I repeatedly notified the tenant that she could retain a lawyer for legal advice, as I could not provide same at this hearing.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is dismissed without leave to reapply.

The remainder of the tenant's application is dismissed with leave to reapply.

I make no determination regarding jurisdiction of the tenant's application. I make no determination on the merits of the tenant's application. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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: June 30, 2022

Residential Tenancy Branch