



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, LAT, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy signed on March 26, 2022 (the “Two-Month Notice”);
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- An order pursuant to s. 70 authorizing the Tenant to change the locks to the rental unit; and
- Return of his filing fee pursuant to s. 72.

L.Y. appeared as the Tenant and H.L. spoke on his behalf as his agent. M.T. appeared as counsel for the Landlords. S.D. appeared as the respondent Landlord. S.T. and G.G. appeared as the purchasers.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, the parties confirmed that the Tenant vacated the rental unit on July 31, 2022.

As the Tenant vacated the rental unit, the enforceability of the Two-Month Notice is no longer in issue and the Landlords no longer seek an order of possession. I find that the tenancy ended on July 31, 2022. Given this, the claims in the Tenant’s application are now moot. I dismiss the Tenant’s claims under ss. 49, 62, and 70 of the *Act* without leave to reapply.

I make no findings of fact or law with respect to this dispute except as to the end of the tenancy on July 31, 2022. Nothing in this dismissal is to be construed as a limit on either parties' entitlement to compensation or other relief to which they may be entitled to under the *Act*.

Secondary Issue – Joining the Landlords' Application

Landlord's counsel advised that a counterapplication was by filed by the Landlords and the purchasers. Landlord's counsel requested that the Landlords application be dealt with at on the date of the Tenant's application, which had been dismissed.

I was provided a file number by Landlord's counsel. Upon review of the information on the Landlords' application, it appears to have been filed on July 14, 2022 and the Notice of Dispute Resolution provided to the Landlords on July 28, 2022. The claims relate to requests for an order of possession and monetary claims totalling \$31,709.62. It is coming on for hearing on December 12, 2022.

Rule 2.10 permits applications to be joined so that they may be heard at the same time so that the dispute process will be "fair, efficient, and consistent". The primary issue in joining the two applications is the abbreviated service window for the Notice of Dispute Resolution. The right to procedural fairness includes, at a basic level, that a respondent be provided with sufficient notice of a claim such that they can review it and respond. This point is made clear under Rule 2.11 of the Rules of Procedure, which states the following:

2.11 Filing an Application for Dispute Resolution to counter a claim

To respond to an existing, related Application for Dispute Resolution, respondents may make a cross-application by filing their own Application for Dispute Resolution.

The issues identified in the cross-application must be related to the issues identified in the application being countered or responded to.

A party submitting a cross-application is considered the cross-applicant and must apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [Documents that must be served with the Notice of Dispute Resolution Proceeding Package] not less than 14 days

before the hearing and so that the service provisions in Rule 3.15 [Respondent's evidence provided in single package] can be met.

(Emphasis Added)

Given that the Notice of Dispute Resolution was only provided on July 28, 2022, it was impossible for the Tenant to be given at least 14 days notice of the claim prior to the hearing. To be clear, the Landlords' application advances a significant monetary claim for which the Tenant would have only abbreviated notice.

I expressed my concerns with respect to the notice period and advised that the only way in which the matter could proceed is if the Tenant consented to doing so. The Tenant's agent indicated that the Tenant did not consent to proceeding today on the Landlords' application.

I find that joining the applications to be heard on the date of the Tenant's application would be procedurally unfair to the Tenant. It would be in breach of Rules 2.11 and 3.14 and would contravene the intention of Rule 2.10 to ensure a fair process. The request that the matters be joined is dismissed.

Conclusion

The parties confirmed the tenancy ended on July 31, 2022. The issues in the Tenant's application are, therefore, moot. The Tenant's claims under ss. 49, 62, and 70 of the *Act* are dismissed without leave to reapply.

As I was not asked to make any determinations on the substantive aspects of the Tenant's application, I find that the Tenant is not entitled to the return of his filing fee. His claim under s. 72 of the *Act* for the return of his filing fee is dismissed without leave to reapply.

The Landlords request to join the applications is dismissed. The Landlords application will be heard in its own time.

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: August 09, 2022

Residential Tenancy Branch