



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL OLC DRI**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution ("Tenant's Application") made by one of the two Tenants under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- an order to cancel a Notice to End Tenancy ("Notice to End Tenancy") pursuant to section 49;
- an order the Landlord comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or tenancy agreement pursuant to section 62; and
- an order regarding a disputed rent increase pursuant to section 43.

The Tenant who made the Tenant's Application ("FV"), the other tenant ("JR") who was not an applicant in the Tenant's Application, the Tenant's two advocates ("CG" and "CH") and three agents for the Landlord ("JC", "LH" and "CH") attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

CG stated that there was another advocate for the Tenant who arranged for service of the Notice of Dispute Resolution and Tenant's evidence ("NDRP Package") on the Landlord. CG stated he was not sure how the NDRP Package was actually served on the Landlord received the NDRP Package on May 17 2022. I find the NDRP Package was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

JC stated the Landlord served its evidence on the Tenant and JR by registered mail. JC provided the Canada Post tracking numbers to corroborate her testimony that the Landlord served each of the Tenant and JR with its evidence. I find the Landlord served the Tenant and JR with its testimony pursuant to section 88 of the Act.

Preliminary Matter – Correction of Respondent's Name

At the outset of the hearing, I noted the name of the landlord ("HI") named in the tenancy agreement was different from the name of the respondent that the Tenant used in the Tenant's Application. LH confirmed the name of the landlord is HI. CH requested that I amend the Tenant's Application to correct the name of the respondent to HI. LH consented to the proposed amendment. Rule 4.2 of the RoP 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.

At the request of CH, and with the consent of LH on behalf of HI, I order the Tenant's Application be amended to correct the name of the respondent to HI.

Preliminary Matter - Severance and Dismissal of Tenant's Claims

The Tenant's Application included claims for (i) an order that the Landlord to comply with the Act, Regulations and/or tenancy agreement; and (ii) an order regarding a disputed rent increase (collectively the "Other Claims").

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch ("RTB") are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the Original Hearing, I advised the parties the primary issue in the Tenant's Application was whether the tenancy would continue or end based on whether the Notice to End Tenancy was cancelled. Accordingly, I find the Other Claims are not

sufficiently related to the primary issue of whether the Notice to End Tenancy is upheld or set aside. Based on the above, I sever the Other Claims from the Tenant's Application and will dismiss them with or without leave to reapply, depending upon whether the Notice to End Tenancy is cancelled.

Preliminary Matter - Dismissal of Tenant's Application

At the outset of the hearing, I noted that, although the Tenant submitted into evidence a copy of a One Month Notice for Cause dated October 15, 2021 ("1 Month Notice"), he did not submit a copy of a Notice to End Tenancy. JC stated that, other than for the Landlord serving the Tenants with the 1 Month Notice, the Landlord has never served the Tenants with another Notice to End Tenancy. CG acknowledged the Tenants were served with the 1 Month Notice but they have never been served with another Notice to End Tenancy. JC stated that, after service of the 1 Month Notice on the Tenants, the Landlord and Tenants entered into a settlement and mutual agreement ("Mutual Agreement") whereby the Landlord agreed to cancel the 1 Month Notice and the Tenants agreed to vacate the rental unit by April 30, 2022. JC stated the Tenants breached the Mutual Agreement as they did not vacate the rental unit by April 30, 2022. JC stated the Landlord made an application for dispute resolution ("Landlord's Application") to seek an Order of Possession based on the Mutual Agreement. JC stated that, by the time the Landlord's Application was made with the RTB, it was too late for the Landlord's Application to be scheduled for hearing with the hearing for the Tenant's Application. JC stated the hearing of the Landlord's Application is scheduled for December 12, 2022.

Based on the foregoing, I find there is no need to continue with this hearing as there is no Notice to End Tenancy for me to consider cancelling or, alternatively, issuing an Order of Possession to the Landlord pursuant to section 55(1) of the Act. As such, I dismiss the Tenant's Application without leave to reapply. As I have made no order for the Tenant, or his co-tenant JR, to vacate the rental unit, the tenancy continues until ended in accordance with the Act. The Tenant has the option of making a new application to make the Other Claims.

Conclusion

The Tenant's Application is dismissed without leave to reapply. As I have made no order for the Tenant, or his co-tenant JR, to vacate the rental unit, the tenancy continues until ended in accordance with the Act.

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: September 7, 2022

Residential Tenancy Branch