



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC RP**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”). The Tenants applied for the following:

- an order cancelling a One Month Notice to End Tenancy for Cause dated August 10, 2022 (“1 Month Notice”) pursuant to sections 47 and 55; and
- an order for the Landlord to complete repairs to the rental unit pursuant to section 32.

A representative for the Landlord did not attend the hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:14 am, in order to enable a representative of the Landlord to call into this teleconference hearing. The two Tenants (“GP” and “HL”) attended the hearing and 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 were provided in the Notice of Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that GP, HL and I were the only ones who had called into this teleconference.

HL stated the Tenants served the NDRP to the Landlord by registered ExpressPost mail on September 7, 2022. HL submitted into evidence a copy of the Canada Post receipt, address stub and tracking number for service of the NDRP on the Landlord. Based on the undisputed testimony of HL, I find the Landlord was served with the NDRP in accordance with the provisions of section 89 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants' Claims

The Tenants made a claim in the Application for an order for that the Landlord complete repairs to the rental unit.

Rule 2.3 of the RoP states:

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.

The most important issue in the Application is to address whether the 1 Month Notice should be cancelled. I find the Tenants' claim for an order that the Landlord complete repairs to the rental unit is unrelated to the Tenants' claim for cancellation of the 1 Month Notice. Based on the above, I order the Tenants' claim for an order that the Landlord perform repairs to the rental unit be dismissed with leave to reapply. The Tenants have the option of making a new application for dispute resolution to make the claim. The Tenants may call the Contact Centre of the Residential Tenancy Branch to obtain information on seeking an order that the Landlord complete emergency repairs and general repairs and the procedures for such applications.

Preliminary Matter – Effect of Non-Attendance of Landlord at Hearing

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") 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.

Even though the Tenants made the Application to seek cancelation of the 1 Month Notice, the Landlord must nevertheless meet the burden of proving that, on a balance of probabilities, it is more likely than not that the 1 Month Notice is valid.

Rules 7.1, 7.3 and 7.4 of the RoP 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 Landlord did not attend the hearing before it ended at 11:14 am, being more than 10 minutes after its commencement, I find the Landlord has not met the burden of proof that it is more likely than not that the 1 Month Notice is valid. As such, I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the Act.

Conclusion

The 1 Month Notice is cancelled. 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: November 17, 2022

Residential Tenancy Branch