



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings and didn’t have any concerns with timely service of documents.

Preliminary Issues

At the commencement of the hearing, the parties both agreed that the tenant had vacated the rental unit either on October 31, 2022 or November 1, 2022. The landlord testified that the rental unit is now occupied by a new tenant. Consequently, I find the tenancy has ended pursuant to section 44(1)(f) and the tenant’s application seeking to cancel the landlord’s notice to end tenancy is dismissed without leave to reapply on that basis.

The tenant filed an amendment to her application for dispute resolution on December 7, 2022, the day before today’s hearing, adding an application for a monetary claim not previously sought in her original application to cancel the notice to end tenancy.

Rule 4.3 requires amended applications and supporting evidence be submitted to the Residential Tenancy Branch as soon as possible and in any event early enough to allow the applicant to comply with rule 4.6.

Rule 4.6 states:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing. See also Rule 3 [Serving the application and submitting and exchanging evidence].

Rule 2.3 states that claims made in an application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule 6.2 states that 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 tenant acknowledged she did not serve the landlord with a copy of the amendment but sought an adjournment of the hearing so that she could serve the landlord with it. I determined that allowing the amendment and allowing the tenant to seek an adjournment to comply with rules 4.3 and 4.6 would breach the principles of natural justice by denying the landlord the opportunity to understand the nature of the monetary claim against him and denying him the opportunity to prepare a defence to it. Filing a new application and serving the landlord with it in accordance with rule 3 would provide the landlord with the requisite time to prepare a defence to the claim and allow the landlord time to mount a counterclaim, should the landlord choose to do so.

I also determined that the nature of the amendment was not related to the original claim for which this hearing was scheduled – to dispute a notice to end tenancy. Consequently, pursuant to rules 2.3 and 6.2, I exercised my discretion to dismiss the amendment filed the day before the hearing, with leave to reapply.

The tenant's filing fee will not be recovered from the landlord as the tenant's application was not successful.

Conclusion

The tenancy has ended pursuant to section 44(1)(f).

The application seeking to cancel the notice to end tenancy is dismissed without leave to reapply.

The amendment seeking a monetary order is dismissed with leave to reapply.

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: December 09, 2022

Residential Tenancy Branch