



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNRL, MNR-DR, MNDL, MNDCL, FFL; CNC, PSF, LRE, OLC, FFT

Introduction

This hearing dealt with the landlord's application, filed on August 22, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on July 28, 2022, pursuant to the *Act* for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. and ended at 9:45 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed his name and spelling. He stated that he had permission to represent the landlord ("landlord") named in the landlord's application. He said that the landlord owns the rental unit. He confirmed the rental unit address. He provided his email address for me to send a copy of this decision to the landlord after this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord's agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord's agent. I informed him that I could not provide legal advice to him, and he could hire a lawyer for same. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the RTB *Rules* provides as follows:

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 that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the applicant tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 1 Month Notice, the landlord may be entitled to an order of possession, if the notice meets the requirements of section 52 of the *Act*.

Neither party provided a copy of the 1 Month Notice for this hearing, so I could not determine whether it complies with section 52 of the *Act*.

At the outset of this hearing, the landlord's agent stated that the tenants vacated the rental unit on October 18, 2022. He said that the landlord took back possession of the rental unit, and the landlord did not require an order of possession against the tenants. I informed him that the landlord's application for an order of possession was dismissed without leave to reapply. He confirmed his understanding of same.

Preliminary Issue – Amendment of Landlord's Application

At the outset of this hearing, the landlord's agent confirmed that the landlord filed the original direct request application for an order of possession for unpaid rent, a monetary order for unpaid rent of \$1,400.00, and the \$100.00 application filing fee. He stated that the landlord filed an amendment on December 8, 2022, to add monetary claims for damages and losses, totalling up to \$33,787.00, including the \$100.00 filing fee.

I informed the landlord's agent that the landlord's amendment and evidence were submitted late on December 8, 2022, less than 14 days prior to this hearing on December 19, 2022, contrary to Rule 3.14 of the RTB *Rules*. For the above reasons, I notified him that I could not consider the landlord's amendment at this hearing or in this decision, and the landlord could reapply for same, if he wanted to pursue same in the future. He confirmed his understanding of same. He affirmed that he wanted to pursue the landlord's monetary application for unpaid rent at this hearing.

Preliminary Issue – Service of Landlord's Application

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the landlord's paper application only, not any submissions from the tenants.

An "interim decision," dated October 11, 2022, was issued by an Adjudicator to the landlord, for the direct request proceeding. The interim decision adjourned the landlord's application from the direct request proceeding to this participatory hearing. A notice of reconvened hearing, dated October 13, 2022, was also issued by the RTB to the tenant.

The interim decision states the following at page 2, as to why the application was adjourned to this participatory hearing:

I have reviewed all documentary evidence and I find that the landlords' names on the tenancy agreement do not match the landlord's name on the Application for Dispute Resolution. There is also no evidence or documentation showing that the applicant is the owner of the rental property or is otherwise entitled to any orders that may result from this application.

I also find that the signed tenancy agreement indicates the monthly rent is \$150.00. The applicant submitted a copy of a second agreement listing the rent as \$1,500.00; however, I find this document is not signed by the tenants.

As this is an ex parte proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. I find these discrepancies raise questions that can only be addressed in a participatory hearing.

The landlord was required to serve the tenants with copies of the interim decision, the notice of reconvened hearing, and all other required documents, within three days of receiving it, as outlined in the interim decision itself. The interim decision states the following at page 3 (bold emphasis in original):

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

The landlord's agent testified that the above documents were served to the tenants by registered mail in September 2022. When I asked how this was possible, when the interim decision was dated October 11, 2022, the landlord's agent then changed his testimony. He said that the above documents were posted to the tenants' rental unit door on October 15, 2022.

As per the online RTB dispute access site, the landlord was emailed the above documents by the RTB on October 13, 2022, to serve to the tenants within 3 days, by October 16, 2022.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

89 (1) *An application for dispute resolution ..., when required to be given to one party by another, must be given in one of the following ways:*

*(a) **by leaving a copy with the person;***

*(b) **if the person is a landlord, by leaving a copy with an agent of the landlord;***

*(c) **by sending a copy by registered mail to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;*

*(d) **if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;***

*(e) **as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].***

I find that the landlord did not serve the tenants with the interim decision or notice of reconvened hearing, as required by section 89 of the *Act*, Rule 3.1 of the *RTB Rules*, and Residential Tenancy Policy Guideline 12.

I informed the landlord's agent that posting to the door is not a permitted method of service, pursuant to section 89(1) of the *Act*, for a monetary application. Further, the tenants did not attend this hearing to confirm service of the above documents. The landlord's agent was given ample time of 15 minutes during this hearing to look through his documents and provide sufficient evidence regarding service.

The landlord originally filed the direct request application on August 22, 2022. The interim decision is dated October 11, 2022, and the notice of reconvened hearing is dated October 13, 2022. This hearing occurred on December 19, 2022.

The landlord had ample time from October 13, 2022 to December 19, 2022, a period of over 2 months, to properly amend his application, serve the tenants, and provide sufficient evidence of same.

I notified the landlord's agent that the landlord's application was dismissed with leave to reapply, except for the order of possession and the \$100.00 filing fee. I notified him that the landlord was at liberty to file a new application, if he wants to pursue this matter in the future. He confirmed his understanding of same.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

The landlord's application for an order of possession and to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application 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 19, 2022

Residential Tenancy Branch