



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT
 OPR-DR, MNR-DR, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application filed on August 3, 2022, the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on July 11, 2022 (the "Notice") as well as more time to make such an Application. In the Landlords' Application filed on October 4, 2022 the Landlord sought an Order of Possession and monetary compensation based on the Notice as well as recovery of the filing fee.

The hearing of the parties' respective applications was originally scheduled for teleconference hearing at 9:30 a.m. on January 3, 2022. Both parties called into that hearing. The Tenant was represented by her mother, E.T. and the Landlord, G.R. called into the hearing. The Tenant's mother advised that the Tenant was not able to attend the hearing as she was in a medical facility. By consent the matter was adjourned to 1:30 p.m. on January 10, 2023. Both parties confirmed their agreement to the adjournment as well as their understanding the matter would proceed on January 10, 2023.

On the date scheduled for the reconvened hearing, only the Tenant's mother E.T. called into the hearing. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Tenant's mother.

The Landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. 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 Tenant's mother and I were the only ones who had called into this teleconference.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

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.

As I confirmed the date and time for the January 10, 2023 hearing with both parties at the January 3, 2023 hearing, I am satisfied both parties were advised of the hearing date for the continuation of this matter.

Having failed to call into the reconvened hearing date I dismiss the Landlord's Application without leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Analysis and Conclusion

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

As the Landlord failed to call into the reconvened hearing to provide evidence and submissions in support of the Notice, I find the Landlord has failed to meet the burden of proving the reasons for ending the tenancy. As such, I grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

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: January 10, 2023

Residential Tenancy Branch