



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding CANADIAN APARTMENT PROPERTIES
REIT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a Month Notice to End Tenancy for Cause, pursuant to section 47; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62.

I note that section 55(1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Tenant DY and the respondent, represented by agents ZN (the landlord) and KS, attended the hearing. Tenant DY was assisted by agent DA (the tenant). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service

The tenant registered mailed the notice of hearing and the evidence (the materials) on November 25, 2022. The landlord confirmed receipt of the materials.

The landlord registered mailed the response evidence on December 29, 2022 and March 09, 2023. The tenant only confirmed receipt of the December 29, 2022 package.

Based on the testimonies, I find that the tenant served the materials and the landlord served the response evidence package mailed on December 29, 2022 in accordance with section 89(1) of the Act.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The Rules of Procedure state that in the calculation of days expressed as “not less than”, the first and last days must be excluded.

Per section 90(a) of the Act, the package mailed on March 09, 2023 is deemed received on March 14, 2023. The hearing was on March 21, 2023.

The response evidence package mailed on March 09, 2023 is excluded, per Rule of Procedure 3.15, as it was served one day late and the tenant did not confirm receipt.

Preliminary Issue - Unrelated Claim

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the cancelation of a one month notice to end tenancy and the continuation of this tenancy is not sufficiently related to the tenant's other claim to warrant that they be heard together.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for

ending this tenancy. I exercise my discretion to dismiss the tenant's other claim with leave to reapply.

Issues to be Decided

Is the tenant entitled to the cancellation of a one month notice to end tenancy for cause?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the accepted evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the notice to end tenancy for cause.

Both parties agreed the ongoing tenancy started on March 01, 2021. Monthly rent is \$1,319.50, due on the first day of the month. The landlord collected and currently holds in trust a security deposit of \$650.00. The tenancy agreement was submitted into evidence.

Both parties agreed the landlord did not serve a one month notice to end tenancy. The landlord affirmed the tenant signed a mutual agreement to end tenancy in October 2022. The tenant stated he signed the mutual agreement to end tenancy under duress.

Analysis

I accept the uncontested testimony that the landlord did not service a one month notice to end tenancy.

The application for an order to cancel a one month notice to end tenancy is moot since the landlord did not serve a one month notice to end tenancy.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be

determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenant's application.

The tenancy continues.

Conclusion

I dismiss the tenant's application without 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: March 21, 2023

Residential Tenancy Branch