



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, PSF, LRE, OLC, FFT
OPR, MNRL-S, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application, filed on November 9, 2022, the Tenant sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities issued on November 3, 2022 (the "Notice");
- an Order that the Landlord
 - provide services or facilities;
 - be restricted from entering the rental unit; and,
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulations*, and/or the tenancy agreement; and
- recovery of the filing fee.

In the Landlord's Application, filed on November 18, 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' cross applications was scheduled for 9:30 a.m. on March 24, 2023. The line remained open while the phone system was monitored for 20 minutes and the only participant who called into the hearing during this time was the Landlord's Property Manager, G.S. The Tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.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 G.S and I were the only ones who had called into this teleconference.

G.S. testified that the Tenants had vacated the rental unit at some time in December 2022. She further advised that the Landlord re-rented the unit as of January 1, 2023.

Analysis and Conclusion

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) (RTA) 57(3)(c) (MHPTA) which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenant named the property manager's assistant, A.H., as Landlord. A review of the tenancy agreement confirms the Landlord is J.S. I therefore Amend the Tenant's Application to correctly name the Landlord.

Rules 7.1, 7.3 and 7.4 address the requirement of a party to call into the teleconference hearing and read as follows:

7.1 Commencement of Hearing

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

As the Tenants did not call into the hearing by 9:50 a.m., and the Landlord's representative appeared and was ready to proceed, **I dismiss the Tenants' claim without leave to reapply.**

In the normal course, when a tenant fails to call into a hearing to dispute a notice and their application is dismissed for non attendance, a landlord would be entitled to an Order of Possession and Monetary Order pursuant to section 55 of the *Act*. However, in this case the Tenants had vacated the rental unit such that an Order of Possession as no longer required.

Additionally, I declined to provide the Landlord with a Monetary Order at this time. G.S. was not able to clarify the amounts claimed by the Landlord for outstanding rent as the figure noted on the Notice, \$15,600.00 as of November 1, 2022, did not accord with the total outstanding amount as of the date of the hearing in the amount of \$18,300.00. G.S. confirmed that it was the Landlord's preference to reapply for monetary compensation to include all outstanding rent as well as the cost to clean and repair the rental unit. Accordingly, **I dismiss the Landlord's claim for monetary compensation with leave to reapply.**

I also dismiss the Landlord's claim for recovery of the filing fee 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 24, 2023

Residential Tenancy Branch