



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, MNDCT, RR, RP, AAT, PSF, LRE, LAT, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 14, 2022 (the “Application”).

This matter came before me November 01, 2022, and an Interim Decision was issued the same date. The Interim Decision should be read with this Decision. The Tenant originally applied for numerous issues; however, the Tenant had moved out of the rental unit and therefore only the request for compensation and to recover the filing fee remained relevant. Given service issues, the matter was adjourned to deal with the request for compensation and the filing fee.

The Tenant appeared at the reconvened hearing. The Landlord appeared at the reconvened hearing with Legal Counsel.

The Tenant had been ordered in the Interim Decision to serve and submit further documents; however, the Tenant had not done so. When asked about this, the Tenant talked about still waiting for police evidence and further evidence about their claim. I told the Tenant I would not accept further evidence after the hearing. The Tenant asked about their options and I told the Tenant they could proceed with the Application or withdraw the Application and re-file when they had all of their evidence to submit. The Tenant chose to withdraw the Application and re-file when they have all of their evidence to submit.

Legal Counsel objected to me allowing the Tenant to withdraw the Application and re-file. Legal Counsel submitted that, if the Tenant withdraws the Application, they should not be permitted to re-file. Legal Counsel did not point to a section of the

Residential Tenancy Act (the “*Act*”) or RTB Rules of Procedure (the “*Rules*”) to support their position.

I allowed the Tenant to withdraw the Application with the understanding that they can re-file when they have all of their evidence. I note that the Application started as an application for numerous issues while the Tenant was still living at the rental unit and therefore, at the first hearing, compensation was not the only issue raised. I find this relevant because the Tenant had time limitations in filing the original Application and could not have waited until they had all relevant evidence to file the Application. Further, I note that I did not hear either party on the compensation claim at either hearing so this is not a situation where I had heard evidence that should be decided on. As well, I note that this is a request by the Tenant for compensation from the Landlord and I do not find there to be much prejudice to the Landlord in this matter being delayed. This is not a situation where the Landlord stands to gain something from the Application such as an Order of Possession or an order that they can keep a security deposit. This is not an urgent matter. I also note that the Tenant referred to not having received all of the evidence they want to rely on and therefore not allowing the withdrawal would have resulted in the Tenant having to proceed in the absence of evidence they say is relevant to the claim. I find this to be different than a situation where the Tenant was negligent in serving and submitting evidence prior to the hearing. Finally, in my view, the compensation claim should be decided with all relevant evidence before the arbitrator.

In my view, the *Act* does not prohibit an arbitrator from allowing an applicant to withdraw their application and re-file it at a later time. The Rules do address withdrawing an application at rule 5.0.1. The Rules address withdrawing an application prior to the hearing, which does not apply here. The Rules address withdrawing an application to dispute a notice to end tenancy, which does not apply here. The Rules address withdrawing an application once the hearing has started; however, given the reference to “continuation” of the hearing, I find this relates to hearings where the arbitrator has started to hear the issues raised, which is not the case here. I note that rule 5.0.1 states under “withdrawing all other types of applications” that the applicant simply has to notify the respondent of the withdrawal. I find that I am permitted to allow the Tenant to withdraw the Application if it is appropriate to do so and I find it appropriate given the points outlined in the paragraph above.

Given the above, the Application is withdrawn. A withdrawal allows the applicant to re-file the claim. The time limits set out in the *Act* still apply.

Conclusion

The Application is withdrawn at the request of the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 01, 2023

Residential Tenancy Branch