



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, MNDCT, MNSD, RR, RP, OLC, FFT

Introduction

This hearing dealt with the tenants' application, filed on December 27, 2022, and amendments, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order of \$8,000.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenants' security deposit of \$1,000.00, pursuant to section 38;
- an order allowing the tenants to reduce rent of \$1,000.00 for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 32;
- 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 this application, pursuant to section 72.

The landlord and the two tenants, tenant GS ("tenant") and "tenant DR," attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 21 minutes from 1:30 p.m. to 1:51 p.m.

The landlord intended to call “witness TF,” who was excluded from the outset of this hearing at 1:32 p.m. He did not hear evidence from either party during this hearing. He did not return or testify at this hearing.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after this hearing.

The tenant identified herself as the primary speaker for the tenants at this hearing. Tenant DR agreed to same.

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, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or represent them as their agent or advocate. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties were given multiple opportunities to settle this application but declined to do so. Both parties discussed settlement during this hearing but did not settle this application.

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package and amendments. The tenant confirmed receipt of the landlord’s evidence. In accordance with sections 88 and 89 of the *Act*, I find that landlord was duly served with the tenants’ application and amendments and both tenants were duly served with the landlord’s evidence.

Preliminary Issue – Ongoing Tenancy Claims

At the outset of this hearing, both parties agreed that the tenants moved out of the rental unit on January 25, 2023. The landlord said that she took back possession of the rental unit. She affirmed that she did not require an order of possession against the tenants.

I informed both parties that the tenants' application, including the \$100.00 filing fee, was dismissed without leave to reapply, except for the tenants' monetary claims, totalling \$10,000.00. Both parties affirmed their understanding of same.

I notified both parties that the tenants' claims in their application, except for their monetary claims, relate to an ongoing tenancy and this tenancy ended. I informed them that the landlord would not be issued an order of possession against the tenants, since she did not require one and she took back possession of the rental unit. Both parties affirmed their understanding of same.

If the tenants' application to cancel a 10 Day Notice is dismissed, the landlord may be entitled to a monetary order for unpaid rent, pursuant to section 55 of the *Act*, without filing a separate application, if the landlord's 10 Day Notice complies with section 52 of the *Act*. However, the landlord did not request a monetary order for unpaid rent, nor did she review or explain any evidence, regarding this claim, including the 10 Day Notice, at this hearing. Therefore, I do not issue a monetary order for unpaid rent to the landlord.

Preliminary Issue – Severing the Tenants' Monetary Claims

The following RTB *Rules* state the following (my emphasis added):

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

I informed both parties that Rules 2.3 and 6.2 of the RTB *Rules* allow me to sever issues that are not related to the tenants' main, urgent claims. The tenants applied for 8 total claims in this application.

I informed both parties that the tenants were provided with a priority hearing date, due to the urgent nature of their claims related to an ongoing tenancy, including to cancel the landlord's 10 Day Notice and 1 Month Notice, and for repairs and an order to comply. I notified them that these were the central and most important, urgent issues to be dealt with at this hearing. The tenant affirmed that the tenants amended their application to include a claim for the return of their security deposit on April 11, 2023, shortly before this hearing on April 28, 2023.

I informed both parties that the tenants filed their application on December 27, 2022. The tenants did not amend their applications to remove the ongoing tenancy claims, prior to this hearing. I notified both parties that the tenants moved out of the rental unit on January 25, 2023, shortly after filing this application on December 27, 2022. The tenants did not wait for this hearing to decide the outcome of the 10 Day Notice and the 1 Month Notice and whether this tenancy would continue or end.

The tenants' monetary claims are not related to their main, urgent ongoing tenancy claims. I notified both parties that the tenants' monetary claims were non-urgent lower priority issues, that could be severed at a hearing. This is in accordance with Rules 2.3, 2.9, and 6.2 of the RTB *Rules* above. Both parties affirmed their understanding of same.

I informed both parties that the tenants' monetary application, totalling \$10,000.00, was dismissed with leave to reapply. I notified both parties that the tenants are at liberty to file a new application and pay a new filing fee, if they want to pursue these monetary claims in the future. Both parties affirmed their understanding of same.

Further, there was insufficient time to deal with the tenants' monetary claims, totalling \$10,000.00, at this hearing. Both parties provided voluminous documents as evidence for this hearing. Both parties were given multiple opportunities to discuss settlement of these monetary claims at this hearing but declined to settle.

Conclusion

The tenants' application for a monetary order of \$8,000.00 for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, authorization to obtain a return of the tenants' security deposit of \$1,000.00, and an order allowing the tenants to reduce rent of \$1,000.00 for repairs, services, or facilities agreed upon but not provided, is dismissed with leave to reapply.

The remainder of the tenants' application is dismissed without leave to reapply.

The landlord is not issued an order of possession or a monetary order for unpaid rent against the tenants.

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: April 28, 2023

Residential Tenancy Branch