



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

OPT, FFT MNETC

Introduction

The Applicants in this matter file two applications seeking relief under the *Residential Tenancy Act* (the “Act”).

R.B. appeared for the Respondent. The Applicants did not attend the hearing, nor did anyone attend on their behalf.

R.B. affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Procedural History

In the Applicants’ first application, they claim an order of possession and return of their filing fee pursuant to ss. 54 and 72 of the *Act*.

The first application was heard by another arbitrator on September 30, 2021 and a decision rendered on October 1, 2021. The October 1, 2021 decision found that there was a landlord-tenant relationship between the parties but did not grant an order of possession as the rental unit was occupied by another tenant.

Following this decision, the Respondent filed a petition to set it aside. The Respondent’s judicial petition was ultimately successful and I was provided with an order made by the Honourable Justice Baker on January 31, 2023. The order provided to me shows that

the October 1, 2021 decision was set aside and sent back to the Residential Tenancy Branch to be reheard on its merits by another decision maker.

In the second application filed by the Applicants, they seek an order for monetary compensation pursuant to s. 51 of the *Act*.

This application was originally scheduled for hearing on October 31, 2022, but was adjourned to February 28, 2023 pending the outcome of the judicial review. I was advised at the reconvened hearing on February 28, 2023 that the Respondent was successful on its judicial review petition but that the applicants had only received notice of the January 31, 2023 order on February 27, 2023.

As outlined in my interim reasons following the February 28, 2023 hearing, I ordered that both the first and the second application be joined in the interest of avoiding the duplication of proceedings. Given the applications were joined and given that the Applicants received notice of the January 31, 2023 order the day prior to the hearing, I adjourned the matter once again to permit the parties time to prepare for the hearing and provide submissions on the issue of jurisdiction.

Applicants Failure to Attend the Hearing

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution at 9:30 AM on May 9, 2022. I confirmed that the correct dial-in numbers and codes were provided within the Notice of Dispute Resolution.

Rule 7.3 of the Rules of Procedure states:

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.

As the Applicants did not attend the hearing, it was conducted in their absence. After waiting on the line with R.B. for 10 minutes, the hearing was concluded without submissions from either party on the substantive issues in either application.

As is made clear by Rule 6.6 of the Rules of Procedure, the onus is on the Applicants to prove their claim on a balance of probabilities. Further, one of the Applicants attended the hearing on February 28, 2023 and were aware that the issue of jurisdiction would be adjudicated at the reconvened hearing. By failing to attend the hearing to make submissions in support of their applications, I find that the Applicants have failed to prove their claim. I hereby dismiss both applications without leave to reapply.

To be clear, I make no findings on the issue of jurisdiction as the matter was not heard nor determined on its merits.

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: May 09, 2023

Residential Tenancy Branch