



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL FFT**

Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenants applied for:

- an order for cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- authorization to recover the filing fee for the Application from the Landlord.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 9:44 am in order to enable the Tenants to call into this teleconference hearing scheduled for 9:30 am. Legal Counsel ("MR") for the Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that MR and I were the only ones who had called into this teleconference.

MR acknowledged the Landlord received the NDRP from the Tenants.

Preliminary Matter – Effect of Non-Attendance by Tenants

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some

situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Pursuant to Rule 6.6 of the RoP, the Tenants bear the onus to prove they are entitled to the claims made in the Application.

Rules 7.1, 7.3 and 7.4 of the RoP state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set 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 the 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.

Given that the Tenants did not attend the hearing within 10 minutes of its commencement, pursuant to Rule 7.3 of the RoP, I dismiss the Application in its entirety without leave to reapply.

MR stated there was a proceeding in the Supreme Court of British Columbia between the parties regarding the same property. MR did not ask for an Order of Possession for the Landlord. As such, I did not consider whether the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

Conclusion

The Application is dismissed in its entirety 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: May 11, 2023

Residential Tenancy Branch