



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNRT, OLC, FFT

Introduction

This hearing dealt with the tenants' application, filed on January 17, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated January 17, 2023, and effective March 14, 2023 ("1 Month Notice"), pursuant to section 47;
- a monetary order of \$345.45 for the cost of emergency repairs, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*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.

"Tenant RC" did not attend this hearing. The landlord, the landlord's agent, and tenant KC ("tenant") 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 9 minutes from 11:00 a.m. to 11:09 a.m.

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

The landlord confirmed that he co-owns the rental unit with his agent, who is his wife. He provided the rental unit address. He said that his agent had permission to represent him at this hearing.

The tenant said that she had permission to represent tenant RC at this hearing (collectively “tenants”).

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 process to both parties. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Preliminary Issue – Dismissal of Tenants’ Ongoing Tenancy Claims

At the outset of this hearing, both parties agreed that the tenants moved out of the rental unit on March 14, 2023.

I informed both parties that the tenants’ application to cancel the landlord’s 1 Month Notice, an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, and recovery of the \$100.00 application filing fee, was dismissed without leave to reapply. I notified them that these claims relate to an ongoing tenancy, this tenancy ended, and I was not required to make a decision on the merits of this application. Both parties affirmed their understanding of same.

If the tenants’ application to cancel a 1 Month Notice is dismissed without leave to reapply, the landlord may be entitled to an order of possession for cause, pursuant to section 55 of the *Act*, without filing a separate application, if the landlord’s 1 Month Notice complies with section 52 of the *Act* and the landlord provides sufficient evidence of same.

The landlord affirmed that he did not require an order of possession against the tenants because he already took back possession of the rental unit. Therefore, I do not issue an order of possession to the landlord against the tenants.

Preliminary Issue – Severing the Tenants’ Monetary Claim

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.***

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 4 different claims in this application and 3 of those claims were dealt with at this hearing.

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 1 Month Notice 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. Both parties affirmed their understanding of same.

I informed both parties that the tenants filed their application on January 17, 2023, and did not amend their application to remove the ongoing tenancy claims, prior to this hearing. I notified them that the tenants moved out of the rental unit on March 14, 2023, almost 2 months prior to this hearing on May 12, 2023. I informed them that the tenants did not wait for this hearing to decide the outcome of the 1 Month Notice and whether this tenancy would continue or end. Both parties affirmed their understanding of same.

The tenants' monetary claim is not related to their main, urgent ongoing tenancy claims. I notified both parties that the tenants' monetary claim was a non-urgent lower priority issue, 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 for the cost of emergency repairs of \$345.45, was dismissed with leave to reapply. I notified them that the tenants

are at liberty to file a new application and pay a new filing fee, if they want to pursue this monetary claim in the future. Both parties affirmed their understanding of same.

Conclusion

The tenants' application for a monetary order of \$345.45 for the cost of emergency repairs 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 for cause, 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: May 12, 2023

Residential Tenancy Branch