



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC RP FFT**

Introduction

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

- an order cancelling a One Month Notice for Cause dated January 16, 2023 ("1 Month Notice") pursuant to section 47;
- an order for the Landlord to complete repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72;.

The Landlord did not attend this hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire hearing, which ended at 1:48 pm, in order to enable the Landlord to call into this teleconference hearing. The two Tenants ("JK" and "DS") attended the hearing and they were 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 were provided in the Notice of Dispute Resolution Proceeding ("NDRP") I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference.

JK stated the Tenants served the NDRP and their evidence (collectively the "NDRP Package") by registered mail on January 26, 2023. JK provided the Canada Post tracking number for service of the NDRP Package. Based on the undisputed testimony of JK, I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants’ Claim for Repairs

The Application included a claim for the Landlord to complete repairs to the rental unit.

Rule 2.3 of the Rules states:

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Application was to whether the Tenants were entitled to cancellation of the 1 Month Notice and whether they were entitled to recover the filing fee of the Application from the Landlord. As such, I severed the Tenants’ claim for an order that the Landlord complete repairs to the rental unit.

Preliminary Matter – Effect of Non-Attendance of Landlord

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.

Even though the Tenants made the Application to seek cancelation of the 1 Month Notice, the Landlord must nevertheless meet the burden of proving that, on a balance of probabilities, it is more likely than not that the 1 Month Notice is valid.

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 the Landlord did not attend the hearing before it ended at 1:48 pm, being more than 10 minutes after its commencement, I find the Landlord has not met the burden of proof that it is more likely than not that the 1 Month Notice is valid. As such, I order the 1 Month Notice to be cancelled. The tenancy will continue until it is lawfully ended in accordance with the Act.

As the Tenants have been successful in the Application, I award the Tenants the filing fee of \$100.00 for the Application pursuant to section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to withhold \$100.00 from their monthly rent on a one-time basis in satisfaction of this amount. The Landlord may not serve the Tenants with a Ten Day Notice for Unpaid Rent and/or Utilities when the Tenants make the \$100.00 deduction from his rent.

As the 1 Month Notice has been cancelled, the Tenants' claim for an order that the Landlord complete repairs to the rental unit is dismissed with leave to reapply. The Tenants have the option of making a new application for dispute resolution to make that claim.

Conclusion

The 1 Month Notice to be cancelled. The tenancy will continue until it is lawfully ended in accordance with the Act.

As the Tenants have been successful in the Application, I award the Tenants the filing fee of \$100.00 for the Application. I authorize the Tenants to withhold this amount on a one-time basis from their monthly rent on a one-time basis in satisfaction of this amount.

The Tenants' claim for an order that the Landlord complete repairs to the rental unit is dismissed with 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 12, 2023

Residential Tenancy Branch