



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was scheduled to convene at 11:00 a.m. on January 11, 2024 concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of the application.

The landlord attended the hearing prepared to respond to the tenants' application, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call. Therefore, I dismiss the tenants' application in its entirety without leave to reapply.

The *Residential Tenancy Act* states:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The landlord testified that some of the landlord's evidence was served to the tenants on January 2, 2024, with the exception of evidence provided by the landlord the morning of

the hearing, however none of the tenants' evidence has been provided to the landlord. Any evidence that a party wishes to rely on must be provided to the other party even if they already have a copy because it is important for all parties to know what is before me. Therefore, I decline to consider any of the tenants' evidentiary material or the landlord's evidence that was filed the morning of the hearing.

The landlord's evidence does not include a copy of a notice to end the tenancy. Therefore, I cannot be satisfied that the notice to end the tenancy given by the landlord is in the approved form and I cannot grant an order of possession or an order requiring the payment of the unpaid rent or utilities in favour of the landlord. The landlord is free to make an application but must serve the tenants.

Conclusion

For the reasons set out above, the tenant's application is hereby 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: January 11, 2024

Residential Tenancy Branch