Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes Landlord: OPC, MND, MNSD, FF
Tenants: CNC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; both tenants and their advocate.

The male tenant testified that the landlord had failed to provide correct procedures in making his Application for Dispute Resolution to be crossed with the tenants' Application. The tenant sought clarity on whether or not the Applications would be heard at the same time because the landlord failed to write on his Application that he wanted it to be crossed with the tenants' Application.

Residential Tenancy Branch Rule of Procedure 2.12 requires a party to a tenancy who is filing an Application for Dispute Resolution to be crossed with an existing Application by the other party of that same tenancy must identify the application they are countering or responding to.

While I recognize that all parties to the Dispute Resolution process are required to follow the Rules of Procedure, I find that when that Rule is designed primarily for the purpose of administration and if not followed will have little or no prejudice to the other party I may determine that the rule does not have to be followed.

In this case, the tenants applied to cancel a 1 Month Notice to End Tenancy for Cause issued on July 30, 2016 and the landlord has applied, at least in part, to obtain an order of possession based on the same notice it should be clear to a reasonable person that the landlord's Application is in response to the tenants' Application.

In addition, because these parties had just been through a hearing in July, 2016 related to another 1 Month Notice for very similar issues I find that a reasonable person would be able to respond to the issues of the 1 Month Notice whether it was the landlord's Application for an order of possession or the tenant's application to dispute the same Notice.

And finally, when the parties' Applications deal with a Notice to End Tenancy and whether or not the Notice is enforceable the landlord does not need to submit an Application for Dispute Resolution to obtain an order of possession, pursuant to Section 55(1) of the *Residential Tenancy Act (Act)*.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

For these reasons, I find there is no prejudice to the tenants because the landlord failed to identify that he sought to have his file crossed with the tenants file.

The male tenant then raised the issue of whether or not the landlord's evidence was valid because he did not follow the rules to submit evidence. The tenant submitted that the instructions require the file number to be noted on each page of the evidence. The male tenant stated that because of this the landlord's evidence should not be accepted. The tenant testified that in the previous hearing the matter was adjourned because the landlord had no evidence and so this matter should be dismissed.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party.

The tenants requested an adjournment to the hearing because they had been working with an advocate who was no longer available when they resigned last week. Their current advocate only obtained the file recently and had not been able to meet with them until this morning.

The landlord objected to an adjournment because he had originally issued a notice to end the tenancy in May 2016 and he has, as of yet, not been successful in ending the tenancy.

In the absence of any evidence to the contrary, I find that while the need for an advocate to assist the tenants to present their case is not entirely necessary, in part because they have just been through this same process and while they weren't represented they were successful, I find that by having allowing their advocate additional time to prepare may contribute to the resolution of these matters.

I find there is no evidence before me that this request results from a deliberate or neglect on the part of the tenants. I also find that despite my finding above that I don't believe the tenants require an advocate the presence of such a support tends to contribute to ensuring a fair opportunity to be heard.

As I was able to provide two very quick possible dates for adjournment and keeping in mind the limitations of the tenants' advocate I am satisfied that there is minimal prejudice the landlord to adjourning this matter to be reconvened in 1 week and 2 days from the date of this original hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; for a monetary order for damage to the rental unit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 47, 55, 67, and 72 of the *Act.*

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act.*

Conclusion

Based on the above:

- **I order** this hearing will be reconvened on October 7, 2016 at 10:30 a.m. using the same call in procedures and codes that they used for the original hearing and as per the Notice of Hearing documents attached to this decision;
- **I order** that this not an opportunity for either party to amend their existing Applications for Dispute Resolution;
- **I order** that this not an opportunity for either party to submit an additional Application for Dispute Resolution to be crossed or joined with any of the Applications for Dispute Resolution currently before me;
- **I order** that this is not an opportunity for either party to submit additional evidence.

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: September 28, 2016

Corrected: October 7, 2016

Residential Tenancy Branch