



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Amendment of the Claim

At the outset of the hearing the tenants testified that they had vacated the rental unit as of May 22, 2019. In their written materials they requested a monetary order for the value of six month's rent, moving expenses, return of application fee, and return of security deposit. This request amounts to an amendment of their application.

The tenants did not file an Amendment to an Application to Dispute Resolution form in advance of the hearing, as required by Rule of Procedure 4.1.

Rule of Procedure 4.2 grants the arbitrator the authority to amend an application at the hearing. However, I decline to exercise this discretion, as the tenants' proposed amendment changes the very nature of the claim. I find that it would be prejudicial to the landlord to allow the tenants to commence a claim on one basis, and then allow them to amend their claim at the hearing. It would deny the landlord adequate time to prepare and assemble evidence.

Additionally, the amendment sought changes the nature of the claim from one where an eviction notice is challenged to one where the tenants seek a monetary order. The Residential Tenancy Branch schedules hearings on the basis of urgency. Applications to challenge eviction notices are scheduled sooner (usually within 4 to 6 weeks of the application being made) than those applying for a monetary order (usually between 10 to 14 weeks of the application being made). The effect of allowing the tenants' amendment would be that they have "skipped the queue", and received an earlier hearing date for a matter that does not warrant one (the tenants received a hearing within 6 weeks of filing the application). Such conduct is not countenanced by the RTB.

As such, I decline to order that the tenant's application be amended to include a monetary claim. If the tenants would like to seek a monetary order against the landlord, they are at liberty to make a separate application seeking such relief.

As the tenants have already vacated the rental unit, **I dismiss their claim to cancel the Notice, without leave to reapply.** As the tenants have not been successful in their application, I decline to order that their filing fee be reimbursed by the landlord.

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 23, 2019

Residential Tenancy Branch