



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALDERIDGE CUSTOM HOMES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 8, 2019 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 44 minutes. The landlord's lawyer, the female tenant ("tenant"), and the tenants' advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's lawyer confirmed that he had permission to represent the landlord company named in this application. The tenant confirmed that she had permission to represent the male tenant (collectively "tenants") and that the tenants' advocate had permission to represent both tenants at this hearing.

This hearing began at 9:30 a.m. with me and the landlord's lawyer present. The tenant and the tenants' advocate called in late at 9:33 a.m., claiming that they were not late, as their clock indicated it was 9:30 a.m. I notified the tenant and the tenants' advocate about what occurred in their absence. The hearing ended at approximately 10:14 a.m.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the legal name of the landlord company. Both parties consented to this amendment during the hearing.

Preliminary Issue – Inappropriate Behaviour by the Tenant and the Tenants' Advocate during the Hearing

Rule 6.10 of the Residential Tenancy Branch *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the tenant and the tenants' advocate yelled at me, refused to answer my questions, and made rude and disparaging comments towards me. The tenant had stated at the beginning of the conference that she wanted to settle her application with the landlord's lawyer but then refused to negotiate and yelled her comments at the landlord's lawyer. When I notified both parties that we would proceed with the hearing since the parties were unable to settle, the tenant refused to answer my questions. I asked the tenant whether she required time to speak to her advocate privately, in order to determine how she wanted to proceed with the hearing, but she refused.

The tenant became upset and angry when I asked relevant, important questions, such as when she received the 10 Day Notice from the landlord, in order to determine whether her application to dispute it was made on time. I repeatedly explained to the tenant and her advocate that I required relevant information to make a decision and if the tenant refused to answer my questions, I would not be able to make a decision. I notified the tenant that if she refused to testify, I would have to make a decision based on the landlord's lawyer's testimony only. When I asked the tenant why she was refusing to answer my questions, she began yelling at me. When I asked why she was yelling and having a negative attitude towards me, the tenants' advocate asked whether I was asking myself whether I had a negative attitude. When I asked her to clarify what she was referring to, she said "are you asking yourself that question about having attitude?" I notified the tenants' advocate that her comments were inappropriate.

Both the tenant and the tenants' advocate yelled at me, spoke at the same time as me, and acted inappropriately. I could not conduct the conference because the tenant refused to answer my questions. I warned the tenant and the tenants' advocate that I would disconnect them from the conference if they continued with their hostile, rude and disruptive behaviour. Therefore, after 44 minutes in the conference, I ended the hearing with all parties.

I caution the tenant and the tenants' advocate to not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and they may be excluded from future hearings. In that case, a decision will be made in the absence of the tenant and the tenants' advocate. The tenants' advocate's role is to assist the tenant; however, the tenants' advocate's behaviour was a complete hindrance and disruption to the tenants' application at this hearing.

The landlord's lawyer had stated earlier in the hearing that he wanted the tenants' application to be adjourned to be heard together with the landlord's application regarding the same 10 Day Notice and unpaid rent scheduled for February 21, 2020. Neither party provided the file number or details for that hearing. The tenant confirmed receipt of the landlord's application but said she only received it a few days prior to this hearing. The tenant said that she did not want to adjourn her matter to be heard together with the landlord's application.

For the above reasons, the tenants' application to cancel the 10 Day Notice is dismissed with leave to reapply. I find that this does not prejudice either party, particularly since the landlord's lawyer wanted the matter heard on the future hearing date.

As the tenant and the tenants' advocate were unwilling to participate fully and respectfully in the hearing, and I was unable to make a decision on the merits of the tenants' application, I find that the tenants are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The tenants' application to cancel the 10 Day Notice 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: January 07, 2020

Residential Tenancy Branch