



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC, MNDL-S, MNDCL-S, CNC, OLC

Introduction

The landlord applied for an order of possession, for compensation, and for recovery of the filing fee under sections 47, 55, 67, and 72 of the *Residential Tenancy Act* ("Act"). The tenants, by way of a cross-application, applied to dispute a One Month Notice to End Tenancy for Cause ("Notice") and for an order for landlord compliance under sections 47 and 62 of the Act, respectively.

The landlord, a witness for the landlord, and one of the tenants attended the hearing on January 11, 2021, which was held by teleconference.

Preliminary Issue 1: Landlord's Failure to Serve Evidence

At the start of the hearing I asked the landlord whether he had served copies of his documentary evidence on the tenant. He responded that he had not and that he had only sent copies of his evidence to the Residential Tenancy Branch. The tenant confirmed that she had not received any evidence from the landlord. It should be noted that there was a substantial amount of documentary evidence submitted by the landlord to the Residential Tenancy Branch.

Rules 2.5, 3.1, and 3.5, of the *Rules of Procedure*, under the Act, require that the applicant serve the respondent with copies of all documentary evidence intended to be relied on at the hearing, at least 14 days before the hearing. (See [Rules of Procedure](#).)

In this case, the applicant failed to do so. The rules and principles of natural justice and procedural fairness require that each party be afforded an opportunity to have in their possession copies of any evidence the opposing side wishes to rely on. As such, it would be unfair and unjust to proceed with a hearing on the landlord's application.

Accordingly, the Notice, which was dated October 28, 2020, is cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Should the landlord wish to reapply for compensation, he may do so. However, he should familiarize himself with the *Rules of Procedure* and requirements concerning service of evidence. As such, I dismiss his application for an order of possession without leave to reapply. His remaining claims are dismissed with leave to reapply.

Preliminary Issue 2: Dismissal of Claims Unrelated to the Notice (Tenant's Application)

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenants' application, I found that the tenants' claim for an order under section 62 of the Act (landlord compliance) is unrelated to the dispute of the Notice. As such, I dismiss that aspect of the tenants' claim, with leave to reapply. What this means is, the tenants may reapply for that specific claim if they wish.

Conclusion

I dismiss the landlord's application.

I grant the tenant's application in respect of the Notice. The Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until it is ended in compliance with the Act. The secondary claim by the tenants is dismissed with leave to reapply.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: January 11, 2021

Residential Tenancy Branch