



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, DRI

Introduction

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

- cancel an additional rent increase by the landlord pursuant to section 43;
- cancel of the landlord's One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47;
- obtain an extension of time to make an application to cancel the Notice pursuant to section 66;

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:50 am in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 am. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified she served the landlord personally with the notice of dispute resolution form and evidence on December 5, 2020.

The tenant testified that, following her serving the landlord, the parties entered into a mutual agreement to end tenancy as of March 31, 2021. She had understood that the landlord would "file" the mutual agreement with the Residential Tenancy Branch. The landlord did not upload the mutual agreement to the RTB evidence web portal for this application.

The tenant also told me that she no longer wants to pursue her application to dispute an additional rent increase.

The landlord did not attend the hearing, so he could not confirm the existence of the mutual agreement. However, Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, as the landlord bears the evidentiary burden to prove that the Notice is valid, and as the landlord did not attend the hearing, the Notice must be cancelled, as the landlord failed to discharge its onus of proof.

Accordingly, I order that the Notice is cancelled and of no force or effect.

I explicitly make no findings as to the existence or validity of any mutual agreement to end tenancy.

As the tenant testified that she no longer wishes to pursue her application to dispute a rent increase (for which she bears the burden of proof, and not the landlord), I dismiss this portion of her application, 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: February 16, 2021

Residential Tenancy Branch