



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNC, OLC, FFT**

### Introduction

The hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated July 9, 2021 ("1 Month Notice") pursuant to section 47;
- an order that the Landlord comply with the Act, *Residential Tenancy Regulations* and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72(1).

The Tenants did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 9:45 am, in order to enable the Tenants to call into this teleconference hearing. The Landlord 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 Dispute Resolution Proceeding. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord acknowledged the Tenants served him with the Notice of Dispute Resolution Proceeding ("NODP") in person on July 28, 2021. As the Landlord acknowledged receipt of the NODP, I find that the Landlord was served the NODP in accordance with the provisions of section 89 of the Act.

### Preliminary Matter - Misspelling of Landlord's Surname

The Landlord stated the Tenants misspelled his surname in their application for dispute resolution. The Landlord referred me to the 1 Month Notice for the correct spelling of his surname and requested that I amend the Tenants' application to correct this error.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Landlord's request could reasonably be anticipated by the Tenants, I amended the Tenants' application to correct the Landlord's name.

### Preliminary Matter – Effect of Non-Attendance by Tenants

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* state:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

Given the Tenants did not attend the hearing within 10 minutes of its commencement, the Tenants' application is dismissed without leave to reapply. This decision does not extend any applicable time limits under the Act.

The Tenants' claim for the filing fee for their application is dismissed without leave as they failed to attend the hearing to present the merits of their application.

#### Preliminary Matter – Landlord's Entitlement to Seek Order of Possession

Section 55(1) of the Act states:

- 55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Landlord testified the Tenants vacated the rental unit on October 31, 2021 and he has taken possession of the rental unit. Accordingly, he was not seeking an Order of Possession pursuant to section 55(1) of the Act. It is therefore unnecessary for me to consider whether the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

#### Conclusion

The Tenants' application is dismissed without leave to reapply.

The Tenants' claim for reimbursement of the filing fee for the application is dismissed 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: November 30, 2021

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Residential Tenancy Branch