

DECISION

Dispute Codes MNDCT, RR, AAT, PSF, OLC, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on November 14, 2022, wherein the Tenants sought the following relief:

- an Order that the Landlord:
 - provide services or facilities as required by law;
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.
- an Order permitting the Tenant to reduce their rent for the cost of repairs or services or facilities;
- an Order for access to the rental unit for the Tenant and/or their guests;
- Monetary compensation from the Landlord in the amount of \$41,085.88; and,
- recovery of the filing fee

The hearing of the Tenants' Application was scheduled for teleconference at 9:30 a.m. on March 28, 2023. Both parties called into the hearing. Both Tenants called in as did their advocates, J.A. and D.J. The Landlord's agents, S.P. and P.J., called in in addition to the Landlord's lawyers, P.O. and Y.B. A witness, C.F. also called in on behalf of the Landlord, although they were excluded from the hearing.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

Preliminary Matter—Delivery of Tenants' Evidence

A review of branch records indicated the Tenants provided the majority of their evidence, 358 pages, less than 14 days prior to the hearing, despite filing their Application on November 14, 2022. Some of this evidence related to claims which are not within the jurisdiction of the Residential Tenancy Act such as claims for defamation and discrimination and administrative costs.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure* (the “*Rules*”). At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

The following *Rules* deal with delivery of documents and provide in part as follows:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

3.15 Respondent's evidence

To ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible.

The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

In the event that evidence is not available when the respondent submits and serves their evidence, the Arbitrator will apply Rule 3.17 [*Consideration of new and relevant evidence*].

See also Rules 3.7 [*Evidence must be organized, clear and legible*] and 3.10 [*Digital evidence*]

3.16 Respondent's proof of service

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the Arbitrator that each applicant was served with all their evidence, as required by the Act.

3.17 Consideration of new and relevant evidence.

Evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the Arbitrator that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

The Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the Arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The Arbitrator must apply Rule 6.3 [*Whether to adjourn the dispute*]

While an Applicant may file evidence fourteen days before a hearing, *Rule 3.1(f)* provides that an Applicant *must* file and serve on the other party their evidence in support of their Application within three days of receipt of the Notice of Hearing. Such early exchange of evidence ensures the Respondent is afforded adequate time to meaningfully respond to the Application. It may also encourage settlement discussions.

Evidence received after this three-day deadline is considered late evidence and must be dealt with in accordance with *Rule 3.17*. I find that the Tenants failed to serve the Landlord with the required documents pursuant to *Rule 3.1* and instead filed and served the majority of their evidence less than 14 days prior to the hearing. The Tenants also failed to show that this evidence was new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

I find that it would be unfair to the Landlord to consider the evidence which was not filed at the time the Tenants filed the Application. I therefore decline to consider this evidence.

Preliminary Matter—Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the Tenants' request for an Order that the Landlord provide access to the rental unit and to provide services or facilities. I also find that this claim is not sufficiently related to the Tenants' monetary claim nor the Tenants' request for an Order that the Tenants be permitted to reduce their rent for services or facilities not provided; accordingly I exercise my discretion and dismiss the Tenants' monetary claims with leave to reapply.

The Tenants' Advocate stated that they wished to refile the Tenants' Application to properly articulate the Tenants' request for an order for an Order that the Landlord provided services and facilities into their more general monetary claim and as a claim for breach of the Tenants' right to quiet enjoyment. I therefore dismiss this claim with leave to reapply.

The parties confirmed that the Tenants' request for access to rental unit relates to a guest who the Landlord will not permit on the property and whose attendance resulted in the issuance of a 1 Month Notice to End Tenancy for Cause. The parties further confirmed that a hearing has been scheduled for May 19, 2023 to address the validity of

that Notice. A review of the material filed in relation to that Application indicates the parties will have a fulsome hearing on the question of whether that guest should be permitted on the property, and the impact on the continuation of this tenancy. I therefore dismiss with leave to reapply, the Tenants' claim for an Order for access to the property for their guest until after there is a determination on the merits of the 1 Month Notice relating to that guest.

The Tenant's Advocate stated that they wished to obtain an Interim Order that the Landlord cease making audio recordings of the tenants and occupants in the common areas. This relief was not sought on the Application and the Landlord was not provided notice of this claim. I therefore dismiss this request with leave to reapply.

Conclusion

The Tenants' Application for an Order that the Landlord provide services or facilities as required by law; and comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement is dismissed with leave to reapply.

The Tenants' Application for an Order permitting the Tenant to reduce their rent for the cost of repairs or services or facilities and the Tenants' Application for Monetary compensation from the Landlord in the amount of \$41,085.88 is dismissed with leave to reapply.

The Tenants' Application for an Order for access to the rental unit for the Tenant and/or their guests is dismissed with leave to reapply.

Having been unsuccessful in their Application, the Tenants' request for recovery of the filing fee 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: April 14, 2023

Residential Tenancy Branch