



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 5, 2016. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord. Affirmed submissions were made by the resident manager, herein after referred to as Landlord. No one was in attendance for the Tenant despite this hearing being convened to hear matters pertaining to the Tenant's application.

Issue(s) to be Decided

1. Should the Tenant's application be dismissed?
2. If so, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified the Tenant entered into a fixed term tenancy agreement which began on October 1, 2015 and switched to a month to month tenancy after six months. Rent of \$770.00 was payable on the first of each month and on September 22, 2015 the Tenant paid \$385.00 as the security deposit.

The Landlord submitted that he personally served the Tenant with the 1 Month Notice on September 30, 2016; as per the copy submitted into evidence by the Tenant. The 1 Month Notice was issued on the prescribed form, pursuant to Section 47(1) of the Act. That Notice listed an effective date of October 31, 2016 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

- Jeopardize a lawful right or interest of another occupant or the landlord

The Landlord confirmed he accepted payment for November 2016 as the Tenant's hearing was not scheduled to be heard until November 28, 2016. He stated that he did not discuss the effectiveness of the Notice with the Tenant as the Tenant's behaviour towards him continues to be argumentative and berating towards the Landlord.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for twelve minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenant, I order the application dismissed without liberty to reapply.

Section 55(1) of the *Act* stipulates that 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.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the *Act* and I find that it was served upon the Tenant in a manner that complies with section 89 of the *Act*.

I further find the Landlord collected payment on November 1, 2016 for use and occupancy of the unit and not for rent as the effective date of the Notice was October 31, 2016. Accordingly, the Landlord has been issued an Order of Possession effective

November 30, 2016 after service upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant's application was dismissed and the Landlord was granted an Order of Possession.

This decision is final, legally binding, and 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 28, 2016

Residential Tenancy Branch