



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction and Preliminary Matters

On October 5, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two-Month Notice to End Tenancy for Landlord’s Use of Property. The matter was set for a participatory hearing via conference call.

The Tenants were emailed a copy of the Notice of a Dispute Resolution Hearing by the Residential Tenancy Branch on October 10, 2018. The Tenants; however, did not attend the teleconference hearing set for this date at 9:30 a.m. The phone line remained open for 39 minutes and was monitored throughout this time. The only parties to call into the hearing were for for the Landlord and they indicated that they were ready to proceed and were given a full opportunity to have their testimony be heard. I have confirmed that the file audit records indicate that the Tenants did not make any attempt to cancel the hearing prior to the start. I have also confirmed that the date, time and codes for the teleconference were correct and that the only persons showing on the teleconference system were the Landlord, his Agent and myself.

After keeping the phone line open for 39 minutes, I dismissed the Tenants’ Application without leave to reapply as the Tenants failed to attend the hearing to present the merits of their Application or, at the very least, cancel their scheduled hearing in advance of the hearing.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and Section 55 of the Act (the issuance of an Order of Possession) was considered along with the affirmed testimony and evidence as presented by the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Should the Landlord receive an Order of Possession as a result of the dismissal of the Tenants' Application, in accordance with Section 55 of the Act?

Background and Evidence

The Landlord and their Agent provided the following undisputed testimony:

The Landlord does not have a written Tenancy Agreement with the Tenants.

The tenancy began around November 1, 2017 on a month-to-month basis. The monthly rent was established at \$1,200.00. The Landlord did not collect a security deposit.

The Landlord intends to move back into his house and provided a receipt from Shaw Cable that indicates he has made arrangements to switch his cablevision account to the rental unit for December 1, 2018. The Agent also testified that this is the Landlord's intention and that the Landlord does not have a current, long-term residence at the present time.

The Landlord stated that the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated September 18, 2018 (the "Notice"), was sent to the Tenants via registered mail on September 18, 2018. The Landlord provided a tracking number and according to the Canada Post website, a notice card was left at the Tenants' door on September 24, 2018, indicating that a package was available for them to pick up.

The Landlord did not submit a copy of the Notice to the Residential Tenancy Branch and could not find a hard-copy as part of his own personal file. The Agent testified that he had pictures of the Notice on his cell phone and stated that the Notice provided a move-out date for the Tenants of November 30, 2018 and the reason for the Notice was that the Landlord intended to move into the rental property by December 1, 2018.

I advised the Landlord that he would be required to submit a copy of the Notice to the Residential Tenancy Branch for my review, by 1:00 p.m. on this date.

The Landlord stated that the Tenants are still living in the rental unit and he is requesting an Order of Possession for the rental unit to be effective on November 30, 2018.

Analysis

Section 55 of the Act requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a Notice to End Tenancy that is compliant with the Act.

The Landlord was asked to submit a copy of the Notice to the Residential Tenancy Branch by 1:00pm today. The Landlord did submit a document to the Residential Tenancy Branch on this date and upon review, I noted that the first page was a Proof of Service document, that had "2 mth Notice" handwritten on the top. The Landlord also submitted a copy of a Canada Post registered mail receipt and what appeared to be page 2 of a Two-Month Notice to End Tenancy.

When considering if a Notice is compliant with the Act, I refer to Section 52 which requires that any Notice to End Tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

I find that the Landlord failed to provide sufficient evidence that the Notice to End Tenancy complies with the requirements set out in Section 52 of the Act as the first page of the Notice was not provided. As a result, I cannot issue an Order of Possession to the Landlord in accordance with Section 55 of the Act.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

An Order of Possession was not issued as the Landlord failed to provide sufficient evidence to prove that the Notice was compliant with the Act.

The tenancy will continue until it is ended in accordance with the Act.

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 19, 2018

Residential Tenancy Branch