



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding [tenant named to protect privacy] Ltd
and [tenant named to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), issued pursuant to section 47 of the Act.

The landlord's agent KG called into this teleconference at the date and time set for the hearing of this matter. The applicant (tenant) did not, although I waited until 9:45 a.m. to enable him to connect with this teleconference hearing scheduled for 9:30 a.m.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the respondent and I were the only persons who had called into this teleconference.

The landlord confirmed they received the Notice of Dispute Resolution from the tenant around February but could not recall the exact date.

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 that party, or dismiss the application, with or without leave to re-apply.

I note that 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 tenant had applied to cancel the Notice. The tenant failed to attend the hearing and both parties have failed to file a copy of the One Month Notice in evidence.

Issue to be Decided

1. Is the tenant entitled to an order to cancel a One Month Notice to End Tenancy for Cause pursuant to section 47 of the Act?
2. Is the landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The tenancy started on June 1, 2012. Rent is currently \$1,025.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$475.00 was obtained which the landlord holds it in Trust. A copy of the tenancy agreement was submitted into evidence.

The landlord testified that the One Month Notice to End Tenancy ("One Month Notice") was served by posting on the tenant's door on February 11, 2020. The tenant filed an application to dispute the One Month Notice on February 21, 2020. The landlord failed to file a copy of the One Month Notice to End Tenancy in evidence.

Analysis

Section 47 of the Act provided that upon receipt of a One Month Notice for cause, the tenant may, within ten days, dispute the Notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the Notice. I find that the tenant disputed the Notice within the 10 days.

"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." In this case, the landlord must demonstrate why they feel the One Month Notice is valid.

Section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") 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 or the landlord's Notice to End tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Section 52 of the *Act* 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 of the Notice, state the grounds for ending the tenancy; and be in the approved form. I find the Notice does not comply with the requirements set out in section 52 of the *Act*. The landlord failed to file a copy of the One Month Notice to End Tenancy in evidence.

Section 62(4)(b) of the *Act* dismiss all or part of an application for dispute resolution which does not disclose a dispute that may be determined under the *Act*. I exercise my authority under section 62(4)(b) of the *Act* to dismiss this application for dispute resolution.

Accordingly, in the absence of any attendance at this hearing by the applicant I order the application dismissed without leave to reapply.

Conclusion

I order the application 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: March 31, 2020

Residential Tenancy Branch