



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNC
Landlords: OPC

Introduction

This hearing dealt with the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied under section 46 of the Act to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 8, 2022 (the "10 Day Notice").

The Landlords applied under section 55 of the Act for an Order of Possession pursuant to a One Month Notice to End Tenancy for Cause dated November 19, 2022 (the "One Month Notice").

The Tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlords did not attend this hearing. I left the teleconference hearing connection unlocked until 11:10 am in order to enable the Landlords to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code (referenced on the cover page of this decision) had been provided in the notices of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

I informed the Tenant that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Parties

The Tenant's application initially listed only one of the Landlords, OSC, as the landlord and respondent.

The Landlords' application initially listed the second of the two Landlords, SC, as the sole landlord and applicant, and OSC as SC's agent.

The Tenant stated that SC is the owner of the rental unit and is almost 90 years old. The Tenant explained that SC's son, OSC, helps SC to manage the property. The Tenant stated that he believes OSC has signing authority for SC. The Tenant stated that he may have signed a tenancy agreement but no longer had a copy of it.

As mentioned further below, I have accepted and reviewed a copy of the 10 Day Notice, which I find to be signed by OSC and names OSC as the landlord.

Section 1 of the Act defines a "landlord" to include the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act or the tenancy agreement.

Based on the foregoing and pursuant to section 64(3)(c) of the Act, I have amended the parties' applications to include both SC and OSC as landlords. I find such amendments may reasonably be anticipated by the Landlords in accordance with Rule 4.2 of the Rules of Procedure.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant confirmed that he sent his notice of dispute resolution proceeding package (the "Tenant's NDRP Package") to OSC via registered mail on December 14, 2022. The Tenant submitted a tracking number in support (referenced on the cover page of this decision). Tracking records indicate that the package was delivered on December 28, 2022. I find OSC was served with the Tenant's NDRP Package in accordance with section 89(1)(c) of the Act. Having found OSC to be duly served, and given that OSC (OC) was identified as SC's agent on the Landlords' application, I find SC was sufficiently served with the Tenant's NDRP Package by December 28, 2022, pursuant to section 71(2)(b) of the Act.

The Tenant acknowledged that he did not provide a copy of his documentary evidence to the Landlords. Under Rule 3.14 of the Rules of Procedure, an applicant must ensure that any documentary evidence intended to be relied on at the hearing is received by the Residential Tenancy Branch (the “RTB”) and the respondent not less than 14 days before the hearing. Therefore, aside from a copy of the 10 Day Notice itself, I exclude the Tenant’s documentary evidence from consideration for the purposes of this hearing.

The Tenant acknowledged receipt of the Landlords’ notice of dispute resolution proceeding dated January 6, 2023 regarding the claim for an Order of Possession pursuant to the One Month Notice.

Having found OSC to be served and SC to be sufficiently served with the Tenant’s application, I directed this hearing to continue in the Landlords’ absence.

Preliminary Matter – Dismissal of the Landlords’ Application

Rules 7.3 and 7.4 of the Rules of Procedure state:

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In addition to not attending for the Tenant’s application, the Landlords also did not attend this hearing to present evidence regarding the merits of their own application scheduled to be heard at the same time. Accordingly, I dismiss the Landlords’ application for an Order of Possession under the One Month Notice without leave to re-apply.

Preliminary Matter – Landlords’ Onus of Proof for Notice to End Tenancy

I have reviewed a copy of the 10 Day Notice submitted into evidence by the Tenant. The 10 Day Notice is signed by OSC as landlord and has an effective date of December

20, 2022. It states the Tenant failed to pay rent of \$940.00 due on December 1, 2022. I find the 10 Day Notice complies with the requirements of section 52 of the Act in form and content.

The Tenant acknowledged receipt of a copy of the 10 Day Notice attached to his door on December 8, 2022. Records of the RTB indicate the Tenant made his application to dispute the 10 Day Notice on December 12, 2022. I find the Tenant made his application within the 5-day limit required under section 46(4) of the Act.

The Tenant stated that rent is \$935.00 due on the first day of each month. The Tenant stated that in July 2021, he paid two months' rent ahead but was only given credit for one month. The Tenant stated that he has already paid rent for May 2023.

Where a tenant has applied to dispute a notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove the reasons for ending the tenancy. Rule 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

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.

(emphasis underlined)

The Landlords did not attend this hearing to present evidence to support the reason for ending the tenancy under the 10 Day Notice Notice, as required under Rules 6.6 and 7.4 of the Rules of Procedure. Under these circumstances, I find the Landlords have not discharged their onus of proof, and there is insufficient evidence for me to uphold the 10 Day Notice. Accordingly, I order that the 10 Day Notice be cancelled and of no force or effect.

Conclusion

The 10 Day Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

The Landlord's application for an Order of Possession pursuant to the One Month Notice is dismissed without leave to re-apply.

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 24, 2023

Residential Tenancy Branch