



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This face-to-face hearing was scheduled for 1:30 on today's date to hear a tenant's application to cancel a Notice to End Tenancy for Cause. The applicant did not appear at the hearing by 1:44 p.m. yet the landlord and the landlord's witness appeared and were prepared to proceed with the hearing. Accordingly, the application was dismissed without leave to reapply.

The landlord requested an Order of Possession and I proceeded to hear verbal testimony from the landlord and the landlord's witness.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession and does the landlord require an Order of Possession?

Background and Evidence

Neither the applicant nor respondent provided any documentary evidence for my review prior to the hearing. The landlord brought several documents to the hearing; however, I refused to accept or look at the documents as they were not served upon the Residential Tenancy Branch in accordance with the Rules of Procedure and I could not be assured that they had been served upon the applicant. I agreed to hear verbal testimony from the landlord and the landlord's witness.

The landlord testified that he had entered into a verbal tenancy agreement with the landlord's witness, who is the spouse or former spouse of the applicant, and did not have a tenancy agreement with the applicant. The landlord was of the position that the applicant was an occupant.

The landlord's witness testified that the applicant had vacated the rental unit by June 23, 2009. The witness described how he was asked to go to the rental unit to feed the fish through his lawyer and the applicant's lawyer and when he attended the rental unit he observed the majority of the applicant's possessions removed and the fridge empty. The witness noticed some miscellaneous paperwork and a few pieces of the applicant's

clothing left in the rental unit. The witness has not been living at the rental unit in accordance with the terms required of him as part of the separation with the applicant.

Analysis

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*.

I find that I have insufficient evidence to determine whether the applicant was a tenant or an occupant. Even if I found the applicant was a tenant, a tenancy ends when a tenant vacated or abandoned the rental unit pursuant to section 44 of the Act. Where a tenant vacates or abandons the rental unit, possession reverts back to the landlord automatically. From the testimony provided to me, I find sufficient basis to find the applicant vacated or abandoned the rental unit on or before June 23, 2009. Accordingly, the landlord has regained possession of the rental unit and does not require an Order of Possession.

Conclusion

The application was dismissed without leave to reapply. The landlord does not require an Order of Possession as the applicant has already vacated or abandoned the rental unit.

Dated: July 10, 2009.

Dispute Resolution Officer