



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

I was designated to hear this matter pursuant to section 58 of the *Residential Tenancy Act*, R.S.B.C. (the *Act*). This hearing dealt with the Applicant's application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

While the Respondent attended the hearing by way of conference call, the Applicant did not.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Dispute Resolution Officer. The Dispute Resolution Officer may conduct the dispute resolution proceeding 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 any evidence or submissions from the Applicant, I order the application dismissed without liberty to reapply.

At the hearing, the landlord made an oral request for an Order of Possession if the application to cancel the 10 Day Notice were dismissed. She also testified that she had another hearing scheduled for November 7, 2011 at 2:00 p.m. to consider her application to end this tenancy and obtain an Order of Possession.

Issues(s) to be Decided

Should the landlord be issued an Order of Possession?

Background and Evidence

The landlord testified that this one-year fixed term tenancy with Tenant MG commenced on July 1, 2011. Monthly rent was set at \$890.00, payable in advance on the first of each month.

The landlord said that the Applicant was not the tenant, but had occupied the rental unit with her tenant, Mr. G. She said that Mr. G has been deported to Mexico. She said that she served the 10 Day Notice to the tenant by posting it on his door on September 30, 2011. She said that she has received no portion of the \$890.00 in unpaid rent for September 2011 that prompted her 10 Day Notice.

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

In this case, I am not satisfied that the Applicant is the tenant for the purposes of the *Act*. As such, I cannot consider the landlord's oral request for an Order of Possession because section 55(1)(b) of the *Act* would only allow me to take this action if I were to dismiss the **tenant's** application.

The principles of natural justice also require me to be satisfied that the party who would be adversely affected if I were to grant the landlord's oral request for an Order of Possession has had an opportunity to know the case against him. I am uncertain as to whether the tenant is aware of the Applicant's application to cancel the 10 Day Notice issued to the tenant. However, the landlord stated that she has served the tenant with the 10 Day Notice and her application for dispute resolution for the November 7, 2011 hearing of her application for dispute resolution to obtain an Order of Possession. I find that the November 7, 2011 hearing would be the correct venue to have the landlord's application for an Order of Possession considered.

For these reasons, I deny the landlord's oral request for an Order of Possession.

Conclusion

I dismiss the Applicant's application to cancel the 10 Day Notice dismissed without leave to reapply. I deny the landlord's oral request for an Order of Possession.

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 03, 2011

Residential Tenancy Branch