



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution was to deal with an application by the tenant seeking to cancel the One-Month Notice to End Tenancy for Cause. Both parties appeared and gave testimony in turn.

Preliminary Issue

Late Arrival of Applicant

The hearing started at the scheduled time and only the landlord/respondents appeared at the beginning of the hearing as required. The applicant tenant was not present and the line was held open for 10 minutes. At this point, and the landlord was advised that, because the tenant was not in attendance, the tenant's application to cancel the notice would not proceed and would therefore have to be dismissed.

Based on the tenant's failure to attend and the pending dismissal of the tenant's application, the landlord then requested an Order of Possession pursuant to section 55(1) which provides that, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the arbitrator must grant an order of possession 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 tenant's application is dismissed or the landlord's notice is upheld.

In this instance, however, the landlord's request for an Order of Possession based on the Notice, was denied as no copy of the One-Month Notice to End Tenancy for Cause had ever been submitted into evidence by either party. The landlord requested permission to fax in a copy of the Ten Day Notice to End Tenancy for Unpaid Rent as late evidence and their request was not granted. However, as this particular matter was being discussed, the applicant/tenant finally arrived and entered the conference call.

The landlord stated that the tenant should not be permitted to join the proceedings because of the fact that he arrived 12 minutes late, at which point that the hearing was already in the process of being concluded. However a determination was made to continue with the hearing because both parties were present and available to testify.

Missing Copy of Notice

The tenant was seeking to have the Notice cancelled. However there was no copy of the One Month Notice to End Tenancy for Cause, upon which the application was based, in the file, nor on record as having been received by the Residential Tenancy Branch in evidence.

Although late evidence is not always allowed, a decision was made to permit the tenant to fax in a copy of the One Month Notice to End Tenancy for Cause as both parties were present and each acknowledged the existence of the One Month Notice to End Tenancy for Cause. In order not to delay this matter through an adjournment for the purpose of submitting the Notice, I found that the matter should proceed.

Background and Evidence

The landlord and tenant testified and witnesses were heard. During the proceedings a mediated discussion ensued between the parties and they came to a mutually agreeable resolution the terms of which are as follows:

- The tenant will vacate the unit on or before January 1, 2013 at 1:00 p.m. and the landlord will be issued an enforceable Order of Possession effective on that date.

Based on the mutual agreement reached by the parties during these proceedings, I grant the landlord an Order of Possession effective Monday, January 1, 2013 at 1:00 p.m. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The refund of the tenant's security deposit will be in compliance with the provisions contained in section 38 of the Act.

Conclusion

The parties came to a mutual agreement with respect to the date that the tenancy will end and an Order of Possession was issued on that basis.

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: December 10, 2012.

Residential Tenancy Branch