



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes: CNC, OLC, LRE

Introduction

The tenant has applied for an order pursuant to section 47(4) of the Residential Tenancy Act to set aside a Notice of End a Residential Tenancy November 1, 2014 and setting the end of tenancy for November 20, 2014, as well as an Order limiting the landlord's right of entry, and an Order for the landlord to comply with the Act. Only the landlord's agent JG and a witness for the landlord attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order for Possession?

Background and Evidence

JG testified that the landlord handed the tenant the Notice to End the Tenancy on November 2, 2014. JG testified that the tenancy began on October 8, 2014 and that the tenant paid her rent late for the month of November 2014. JG asked for an order for possession based upon the Notice. The tenant failed to attend her own application notwithstanding the elapse of thirteen minutes.

Analysis

A hearing was scheduled with respect to this matter by teleconference. The applicant failed to participate in the hearing at the appointed time notwithstanding the elapse of **thirteen** minutes. Rule 10.1 of the Rules of Procedure provides:

Commencement of the dispute resolution proceeding

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator 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.

I have dismissed all of the tenant's applications.

The Notice to End a Residential Tenancy relies on sections 47(1)(b) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is **repeatedly** late paying rent;

Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 47 and has upheld the Notice. The landlord requested an Order for Possession effective December 31, 2014 at the hearing. However by the landlord's own admission the tenant had paid the rent late only once and therefore the tenant had not been "repeatedly" late as required by section 47 (1)(b) of the Act. Pursuant to section 62(3) of the Act, I have refused to grant the landlord's request for an Order for Possession.

62(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The Notice to End the Tenancy dated November 1, 2014 is unenforceable.

Conclusion

I have dismissed all of the tenant's applications herein. I have refused to grant the landlord an Order for Possession pursuant to 47 (1) (b). There will not be any recovery of the filing fee.

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 09, 2014

Residential Tenancy Branch

