



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR

Introduction

The landlord applies for an order of possession pursuant to a one month Notice to End Tenancy dated February 26, 2015. A claim for a monetary award was withdrawn at hearing.

It was noted that the landlord shown in the written tenancy agreement is the society. Ms. L.C., also named as a landlord, was removed as a party to this proceeding.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the Notice has ended the tenancy? If so, is the landlord entitled to an order of possession?

Background and Evidence

The particulars of this tenancy were confirmed as being as described in the decision from the related file noted on the first page of this decision.

In that dispute the tenant had applied unsuccessfully to cancel the Notice. As the landlord had not made a verbal request for an order of possession, as it was entitled to do under s. 55 of the *Residential Tenancy Act* (the “Act”), the arbitrator did not issue one.

At this hearing the tenant argues that she did not have an opportunity to collect and present responding evidence at the previous hearing.

Further she argues that she missed her window of opportunity to successfully apply for a review of that decision because of a fax machine problem at the Residential Tenancy Branch.

The tenant points out that she is suffering from a myriad of psychological and physical conditions that inhibit her ability to deal with administrative matters or to locate alternative accommodation.

The tenant's advocate argues that because the landlord did not make a verbal request for an order of possession at the previous hearing, it is now barred from doing so by the principle of *res judicata*.

Analysis

This decision was rendered orally at the hearing.

Insofar as my authority to deal with the issues raised by this application are concerned, it does not extend to a review of or appeal from the decision of the prior arbitrator to uphold the Notice.

Similarly, I have no authority to extend the time for the tenant to make an application for review of the previous decision upholding the Notice.

The principle of *res judicata* is to prevent the same question between the same parties being adjudicated more than once and thereby to avoid multiple proceedings. That principle does not apply here. The question of whether or not the landlord is entitled to an order of possession has not been adjudicated on.

The tenant is operating under a misapprehension when her advocate points out that she did not have to vacate the premises until the landlord obtained an order of possession. The tenant lost her right to possess and occupy the premises when the tenancy ended.

Once the Notice to End Tenancy was upheld by the previous arbitrator, this tenancy ended by operation of law (s. 49 of the *Act*) on the effective date of the Notice, that is, March 31, 2015.

Conclusion

The landlord's application is granted. An order of possession will issue directing the tenant to vacate the property within 48 hours after being personally served with the order or 72 hours after a copy of the order is attached to a door to the premise, whichever occurs first.

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: May 26, 2015

Residential Tenancy Branch

