



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was set for a telephone conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a notice to end tenancy for cause and to recover the filing fee from the Landlord.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance by the Tenant during the 22 minute duration of the hearing or any submission of evidence prior to the hearing.

Preliminary Issues

Rule 10.1 of the Dispute Resolution Proceedings Rules of Procedure states that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the Application, with or without leave to re-apply.

As the Applicant failed to appear for the hearing and the Landlord appeared and was ready to proceed, I dismissed the Tenant’s Application **without** leave to reapply and the Landlord’s notice to end tenancy is upheld. The Landlord explained that he wanted an Order of Possession to enforce the ending of the tenancy.

Section 55(1) (a) of the *Residential Tenancy Act* (the “Act”) states that if a tenant makes an Application 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.

As the Tenant's Application has been dismissed and the Landlord made an oral request for an Order of Possession, I must now grant the Landlord an Order of Possession.

In consideration of when the Order of Possession is to take effect, the vacancy date on the notice to end tenancy provided into evidence by both parties is September 30, 2015. As this date has now passed, the Landlord would be entitled to an Order of Possession which would be effective two days after service on the Tenant.

However, the Landlord explained that he had met with the Tenant a day prior to this hearing and they had both agreed to end the tenancy by mutual agreement. The Landlord testified that the parties had completed the RTB 8 Mutual Agreement to End Tenancy form to end the tenancy on November 30, 2015 at 4:00 p.m. The Landlord testified that they had both signed this document.

As the Tenant would have seen and signed this document, I allowed the Landlord to fax me a copy of this agreement pursuant to Rule 3.19 of the Rules of Procedure. The mutual agreement to end tenancy was faxed to me and I was able to verify the details on the document provided by the Landlord during the hearing.

As a result, I find that the Order of Possession to be granted to the Landlord under Section 55(1) of the Act is to be effective on November 30, 2015 at 4:00 p.m. as per the mutual agreement document provided. This order may be filed and enforced in the Supreme Court as an order of that court for enforcement if the Tenant fails to vacate the rental unit on this date and time. Copies of this order are attached to the Landlord's copy of this Decision. This file is now closed.

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: October 30, 2015

Residential Tenancy Branch

