



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wendeb Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT, AS

Introduction

This hearing was set for 10:30 am on this date to hear an application by the tenant for an order setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent, an order granting him more time in which to make that application, and an order allowing the tenant to assign or sublet because the landlord's permission had been unreasonable withheld.

The owner of the rental unit and the resident manager appeared at the start of the hearing, the tenant did not. I waited several minutes for the tenant to appear. At 10:40 or 10:41 am, just as I was dismissing the tenant's application for his failure to appear an individual called into the hearing. This gentleman said he had received a telephone call from the tenant ten minutes earlier asking him to call into the hearing and ask for a new date. The tenant's agent said the tenant told him he had sent an e-mail to someone about his request for an adjournment. The agent said he did not know anything else and he had to hang up because his boss was yelling at him. It was not clear to me why the tenant was requesting the adjournment and his agent did not give me any opportunity to ask him any questions.

The two representatives of the landlord both advised that the tenant had not approached them about an adjournment.

There was no request for an adjournment on the file or in the computer records, although there was a record of two different telephone calls from the tenant asking for the telephone number and participant code for this hearing and later, asking information about filing evidence. The tenant had not filed any written evidence in advance of the hearing.

Issue(s) to be Decided

Should an adjournment be granted?

If not, what disposition should be made of the tenant's application?

Analysis

The *Rules of Procedure* provide that:

“If a party wants to request that a dispute resolution proceeding be rescheduled to another date because that party will be unable to attend the dispute resolution proceeding due to circumstances beyond his or her control, and if the opposing party does not consent to rescheduling the dispute resolution proceeding, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the arbitrator to reschedule the dispute resolution proceeding by:

- a) Submitting to the Residential Tenancy Branch, at least 3 business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and setting out the circumstances that are beyond the party’s control that will prevent him or her from attending the dispute resolution proceeding; or
- b) Having an agent represent him or her attend the dispute resolution proceeding to make a request to the arbitrator to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party’s control that will prevent him or her from attending the dispute resolution proceeding.”

The *Rules* further provide that:

“Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.”

The tenant filed his application for dispute resolution on September 15, 2015. Although the *Rules* provide that when an application for dispute resolution is filed, or in any event at least fourteen days before the hearing, the applicant to submit all the relevant evidence he or she intends to rely upon at the hearing including a copy of the notice to end tenancy if the applicant is seeking an order of possession or an order cancelling a notice to end tenancy, the tenant has filed nothing in advance of the hearing; not even a copy of the notice to end tenancy.

This lack of any evidence in support of his application and the lack of any prior written request, together with the very short notice given to the agent, and the inability of the agent to properly represent the tenant, leads me to the conclusion that the request for

an adjournment arises out of the intentional actions or neglect of the tenant. The tenant's request for an adjournment is dismissed.

As the tenant did not appear at the hearing, his application is also dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the arbitrator must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord is entitled to an order of possession effective two days after service on the tenant. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

An order of possession has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

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, 2015

Residential Tenancy Branch

