



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, FF (Tenant's Application)
 OPC, FF (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on October 6, 2015 and by the Landlord on October 9, 2015.

The Tenant applied to cancel a notice to end tenancy for unpaid rent and for cause, and to recover the filing fee from the Landlord. The Landlord applied for an Order of Possession for Cause and to recover the filing fee from the Tenant.

The Landlord and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant was represented by an agent who made submissions on behalf of the Tenant during the hearing. Both parties confirmed receipt of each other's Application.

However, there was no documentary evidence, including a copy of any of the notices to end tenancy, in either file before me. The Landlord explained that he had provided a copy of his evidence to his provincial minister as they were undertaking a fraud investigation against the Tenant and the matter was now in their hands. When the Landlord was asked whether he was having the provincial minister represent him at the hearing he replied no. The Landlord testified that he had provided documentary evidence the day before this hearing to the Tenant and to the Residential Tenancy Branch. However, this evidence was not before me at the time of this hearing or had not been forwarded to me by the Residential Tenancy Branch.

The Landlord was informed of the strict deadlines provided by the Rules of Procedure to serve evidence to the Residential Tenancy Branch and to the other party. The Landlord was informed that these time limits were in place to ensure that sufficient time is left for evidence to reach the parties and for them to consider and respond to it. Therefore, as this evidence was not before me and had not been submitted within the time limits for

this hearing, I was unable to consider an adjournment of the proceedings to consider this evidence.

The Tenant's agent explained that they had not submitted any evidence prior to the hearing because they had only received a copy of the Landlord's evidence a day prior to the hearing. However, when the Tenant's agent was asked why they had not submitted a copy of the notice to end tenancy into evidence, the Tenant's agent explained that they were in the process of taking the matter through other legal avenues and did not require any legal findings to be made in this case.

The Tenant's agent was informed that without the notice to end tenancy I would not be able to make any legal findings on the Tenant's Application to have them cancelled. The Tenant's agent was agreeable to this course of action.

Analysis & Conclusion

When a party makes an Application to cancel a notice to end tenancy or a request for an Order of Possession based on a notice to end tenancy, it is imperative that an arbitrator is able to examine the Notice to see if it complies with the Act before a decision can be made on it. The necessity and request for an applicant to provide a copy of the notice to end tenancy is clearly detailed on page two of each Application.

In the absence of the notice to end tenancy before me, I find that I am unable to make any legal findings on both Applications which are hereby dismissed with leave to re-apply. However, this does not extend any applicable time limits under the Act and I have made no findings of fact or law with respect to the merits of the Applications.

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 08, 2015

Residential Tenancy Branch

