



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, DRI, FF

This hearing was originally scheduled for January 7, 2016 to hear a tenant's application to dispute a rent increase and cancel a 10 Day Notice to End Tenancy for Unpaid Rent. At the scheduled hearing both parties appeared. The tenant requested the hearing be rescheduled due to illness. The tenant's request was granted; however, with a view to using the period of adjournment efficiently, the parties were strongly encouraged to use the time to try to resolve the dispute themselves, if possible, considering they have participated in multiple dispute resolution proceedings before and decisions have been issued with respect to the same matter. I issued an Interim Decision that included orders to each party. The Interim Decision should be read in conjunction with this decision.

The hearing was rescheduled for today's date and Notices of Adjourned Hearing were sent to each party.

During the period of adjournment I received submissions from the landlord as I had ordered. I did not receive any submissions from the tenant despite my order for her to do so. Nor, did the tenant cancel the reconvened hearing. At the reconvened hearing scheduled for this date neither party appeared.

Given the tenant's failure to appear at the reconvened hearing, I dismiss her application. However, given the landlord's absence at the reconvened hearing I find it reasonably likely the parties have resolved their dispute.

Section 55(1) of the Act has recently been amended. It provides that I must grant the landlord an Order of Possession where:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to cancel the Notice to End Tenancy meaning part (b) of section 55(1) has been satisfied; however, I do not provide the landlord with an Order of Possession because I have not been satisfied that the Notice to End Tenancy complies with section 52 of the Act as required for me to grant an Order of Possession under part (a) above. The reason I find that part (a) has not been satisfied is because service of evidence had not been confirmed during the first hearing. Rather, that hearing time focused on the tenant's request for an adjournment and assisting the parties to resolve the dispute on their own. Since service of evidence had not been confirmed I have not viewed the evidence provided by the parties for the original hearing and without viewing the evidence I am unable to determine the Notice to End Tenancy complies with the form and content requirements of section 52.

Should the landlord seek an Order of Possession based upon the subject Notice to End Tenancy the landlord is at liberty to file an Application for Dispute Resolution and establish an entitlement to such.

The tenant is cautioned that failure to pay rent that is due to the landlord without a legal basis for withholding all or part of the rent may be a basis for the landlord to end the tenancy for unpaid rent, despite the amount withheld.

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: March 2, 2016

Residential Tenancy Branch