



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SALVATION ARMY HARBOUR LIGHT
and [tenant name suppressed to protect privacy]

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 the Tenant on February 2, 2016 to cancel a notice to end tenancy for cause and to recover the filing fee from the Landlord.

An agent for 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 40 minute duration of the hearing.

Preliminary Findings

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. The Landlord explained that he wanted an Order of Possession to enforce the ending of the tenancy.

Section 55(1) of the *Residential Tenancy Act* (the “Act”) provides 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 to the landlord if the notice to end tenancy complies with Section 52 of the Act. The Landlord testified that he had served the Tenant with the notice to end tenancy on January 26, 2016 by registered mail. I have examined the notice to end tenancy and I find that the form and contents of the notice comply with Section 52 of the Act. As the Tenant’s Application has been dismissed, 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 February 29, 2016. The Landlord testified that the Tenant is not in any rental arrears. Therefore, the Landlord would be entitled to an Order of Possession effective for the end of March 2016. As a result, pursuant to Section 55(1) of the Act, the Landlord is issued with an Order of Possession effective at 1:00 p.m. on March 31, 2016. 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.

However, the Landlord explained that he had been in written communication with the Tenant and his lawyers and advocates a week prior to this hearing and that they were in the process of preparing and completing paperwork regarding a mutual agreement to end tenancy on April 15, 2016. The Landlord explained that the terms of the mutual agreement were still being discussed and this had not been finalised at the time of this hearing. However, the Landlord explained that he was still willing to give the Tenant until April 15, 2016 to vacate the rental unit and would not enforce the Order of Possession until this date.

As there was no evidence before me from the Tenant that a mutual agreement had been reached with the Landlord and the hearing was scheduled to hear the Tenant's Application, I was not in a position to make any legal findings on the mutual agreement as this is still be finalised and confirmed between the parties. Therefore, the above Order of Possession still stands and maybe enforced by the Landlord pursuant to the Act. 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: March 16, 2016

Residential Tenancy Branch