



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AURORA REAL ESTATE INVESTMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46.

Both parties attended this hearing. A representative attended on behalf of the landlord. The tenant was in attendance and represented by an advocate.

Analysis: Authority to hear this matter

This dispute resolution hearing was scheduled as a result of the tenant's application on March 31, 2016 to dispute a landlord's Notice to End Tenancy for Unpaid Rent. An application to dispute a 10 Day Notice must be filed by the tenant within 5 days of the receipt of the Notice to End Tenancy. The tenant testified that she received the 10 Day Notice on March 8, 2016. Therefore, the tenant was required to file her application on or before March 18, 2016. The tenant also did not include a request for more time in her application.

After issuing the 10 Day Notice to End Tenancy, the landlord filed for an *ex parte* Direct Request Application. This application and the evidence submitted were considered and the landlord was granted an Order of Possession on March 29, 2016. It was two days after this date and the issuance of the Order of Possession from the Residential Tenancy Branch that the tenant filed her Application for Dispute Resolution.

At this hearing, the landlord testified, with supporting documentary evidence that the tenant had been removed from the rental unit by a bailiff on April 28, 2016, approximately two weeks prior to the date of this hearing. The tenant and her advocate were provided a full opportunity to explain the timelines and the choices of the tenant with respect to her possible recourse in this matter. Both parties indicated that they wished to see what the result of this application was before taking any further steps.

The doctrine of mootness is a general policy or practice that a court or tribunal may decline to decide a matter between parties that raises merely a hypothetical or abstract question. In *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 is the leading case on the doctrine of mootness and it states,

The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case ... Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. ...

While the Residential Tenancy Branch is not a court, it is bound by many of the same decision-making principles as the courts. In particular, I am bound by the doctrine of mootness. In this case, I find that the tenant's application is moot in that the substantive issues of possession of the rental unit have been resolved – the tenant has vacated the rental unit and the tenancy has ended. I find that the resolution of the controversy regarding possession of the rental unit results in this application for dispute resolution being moot.

I refer to a second legal doctrine in the course of this decision. The doctrine of res judicata prevents the retrying of a matter. The tenant has means of recourse as a result of an ex parte Direct Request application by the landlord. The tenant was provided with a copy of the Direct Request decision and the Order of Possession. She was aware and could reasonably have made herself aware of her option to apply for review after receiving a copy of the Direct Request decision. The tenant testified that she awaited the outcome of this hearing before taking any further steps including filing a review application. In her initial application and in this secondary consideration of applying for review, the tenant has disregarded the timelines within the *Act*.

On the original application by the landlord for an Order of Possession, a decision was made to grant the Order of Possession based on the evidence that the landlord provided at that time. I find this application seeking to cancel the notice to end tenancy addresses the same issue that was before the original arbitrator. It is the same question raised in this application that was addressed in the earlier decision: whether or not this tenancy should end. Therefore, I find that this current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again.

The dispute resolution process is based on the principle of fairness. Many safeguards exist within the Act, Regulation and Policy Guidelines to ensure that both parties have a full opportunity to know the case against them and respond fully to that case. It should be noted, however that a claimant or applicant has a responsibility to take all steps to ensure they present their case as best as they are able, in the appropriate timeline except for extraordinary circumstances and follow their obligations within the Act, Rules of Procedure and Policy Guidelines.

In the case, a Notice to End tenancy was issued and action was taken when an Order of Possession was granted to the landlord. The tenant did not make her application within the required timeline. Therefore, this application cannot proceed and should be dismissed. The tenant no longer resides in the rental unit making the decision moot and therefore it should be dismissed. Furthermore, however, a decision on this particular issue at the first level of dispute resolution hearing was made by another decision-maker within the Residential Tenancy Branch. Therefore, I do not have the authority to make any other decision with respect to this application by the tenant.

Based on my reasoning above, and considering the primacy of ensuring that I have jurisdiction to make a decision on each matter before me, I decline to hear this matter.

Conclusion

I decline jurisdiction to hear this matter.

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: May 25, 2016

Residential Tenancy Branch