



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 4, 2016 and for an order of possession based on Landlord's Use of Property.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matters

At the outset of the hearing, the parties agreed that the only tenant residing on the property is CP and JP. The other tenants whom live in separate units have vacated. Therefore, I find it appropriate to amend the style of cause to reflect the two tenants.

On July 12, 2016, the tenant's Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 4, 2016, was heard. The Arbitrator found that the landlord was duly served as they refused the package from Canada Post.

The Arbitrator granted the tenant's application and the Notice issued on June 4, 2016, was cancelled , as well other relief was granted.

At today's hearing the landlord has applied for an order of possession based on the same Notice issued on June 4, 2016, which was cancelled on July 12, 2016.

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the landlord's request to hear the merits of the 10 Day Notice to End Tenancy for

Unpaid Rent or Utilities issue on June 4, 2016, as this matter was already heard and decided upon at the hearing of July 12, 2016.

Additionally, section 80 of the Act sets out the time frames in which a Review of a decision can be applied for. The Landlord did not file for a Review as required by the Act. Therefore, the landlord application for an order of possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 4 2016, is dismissed.

In addition the landlord has applied for an order of possession based on Landlord's Use of Property pursuant to section 49 of the Act; however, the landlord has not issued or served the tenants with the required notice. Section 52 of the Act states in order to be effective it must be in writing and in the proper form.

As the landlord has not issued the 2 Month Notice for Landlord's Use of Property, I find the landlord's application for an order of possession based on this reason is premature. Therefore, I dismiss this portion of the landlord's claim with leave to reapply.

Conclusion

The landlord's application for an order of possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 4, 2016, is dismissed.

The landlord's application to for an order of possession based on Landlord's Use of Property is premature, as the landlord has not served the required notice on the tenants. Therefore, I dismiss this portion of the landlord's claim with leave to reapply.

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: September 22, 2016

Residential Tenancy Branch