



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KJ FORD HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, MNR, MNDC, RP, RR, OPC

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking an order as follows:

1. For an order of possession.

The tenant's application is seeking orders as follows:

1. To allow a tenant more time to make an application to cancel a Notice to End Tenancy;
2. To cancel a 1 Month Notice to End Tenancy for Cause;
3. For the cost of emergency repairs for a monetary order for money owed or damages under the Act;
4. To make emergency repairs for health and safety reasons; and
5. To make repairs to the unit and to allow a tenant to reduce rent for repairs.

Both parties appeared.

Preliminary and procedural matters

The tenant confirmed they received the landlord's application for dispute resolution and evidence.

The landlord's agent stated that they were not aware the tenant filed an application for dispute resolution. The tenant stated that they did not serve any documents on the landlord.

Under section 59(3) of the Act, a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making

it, or within a different period specified by the director. The principles of natural justice require that a person be informed and given particulars of the claim against them.

Since the tenant did not comply with the Act as they did not serve their application on the landlord. I find I must dismiss the tenant's application due to lack of service.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed the tenant was served with a 1 Month Notice to End Tenancy for Cause, issued on January 10, 2017, with an effective vacancy date of February 15, 2017.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case the tenant was served with a 1 Month Notice to End Tenancy for Cause. The tenant's application to cancel the Notice was dismissed as they failed to comply with section 59(3) of the Act.

Order of possession for the landlord

Section 55 (1) of the Act states, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (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.

Since the tenant's application was dismissed, I find the landlord is entitled to an order of possession. At the hearing, I confirmed the effective date in the notice; however, after further review and consideration of the Notice and the tenancy agreement, I find the effective date stated in the notice is earlier than the earliest date permitted under

Section 47(2) of the Act. Under section 53 of the Act, the effective date automatically corrects to the earliest date that complies with section 47(2) of the Act.

Therefore, I find the landlord is entitled to an order of possession effective February 28, 2017. A copy of the order must be served on the tenant.

Conclusion

The tenant failed to comply with section 59(3) of the Act. The tenant's application was dismissed. The landlord was granted an order of possession on the corrected effective date as stated above.

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: February 10, 2017

Residential Tenancy Branch