



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding White Castle Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR

Introduction

This is the Tenant's Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Unpaid Rent issued February 3, 2017.

The Tenant did not sign into the teleconference, which remained open for 20 minutes.

The Landlord's agents signed into the teleconference and gave affirmed testimony. The Landlord's agents sought an Order of Possession.

Issue to Be Determined

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord provided a copy of a fax in evidence which states, in part:

".... [The Tenant] has filed the above referenced Dispute Resolution on the basis that we incorrectly served him with an Eviction Notice 3 February 2017. It is very possible that we incorrectly served him (even though we do not admit that it was an incorrect serving).

As such and because this is the only objection by the tenant, **we are hereby informing you and the tenant that we are withdrawing our Eviction Notice dated 3 February 2017. There is no need for an arbitration hearing whereby this is the only issue involved...."**

[reproduced as written, my emphasis added]

The Landlord's agent AC confirmed that he told the Tenant that the Landlord was "withdrawing" the Notice and that there was no need to attend the Hearing on March 7, 2017.

AC testified that the Landlord issued a subsequent notice to end tenancy and made a Direct Request Application with respect to the subsequent notice. The Landlord's agent provided the file number for the Direct Request Application, which was considered on February 27, 2017, and adjourned to a participatory Hearing on March 24, 2017.

Analysis

In normal circumstances, when a tenant does not attend a Hearing on his application to cancel a notice to end tenancy, the tenant's application is dismissed and the landlord is provided with an order of possession. The Landlord asked for an order of possession based on the Notice issued February 3, 2017; however, I decline to make that Order.

I find that the Landlord is estopped from exercising its right to an order of possession under these circumstances, as the Tenant may not have signed into the teleconference because he believed that the Notice issued February 3, 2017, had been cancelled or withdrawn by the Landlord. I find that the Landlord, in providing its written statement that **"we are hereby informing you and the tenant that we are withdrawing our Eviction Notice dated 3 February 2017. There is no need for an arbitration hearing"**, it waived its right to attend the Hearing and seek an order of possession.

The Landlord's agents signed into the teleconference, contrary to their statement that the Hearing was no longer required.

Had the Landlord not signed into the Hearing, no order of possession would have been ordered.

I find that there is little prejudice to the Landlord to wait for the participatory Hearing to take place on March 24, 2017, when the merits of the Landlord's subsequent notice to end tenancy can be adjudicated.

Conclusion

I decline to provide the Landlord with an Order of Possession for the reasons outlined 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: March 13, 2017

Residential Tenancy Branch