



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. At the commencement of the hearing the respondent appeared, along with a property manager. The applicant called in a few minutes later and I informed him as to what I had already heard from the respondent.

At the outset of the hearing, the respondent testified that she was not served with a complete hearing package as it was devoid of the Application for Dispute Resolution. The respondent stated that the applicant had actually served the property manager with the documentation. I asked the respondent and the property manager to describe the documents that were received from the applicant. I heard that the property manager was given a copy of the Notice of Hearing; the Dispute Resolution Fact Sheet; a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued to a different tenant in a separate unit; and a copy of a 1 Month Notice to End Tenancy for Cause issued to the applicant named on this application. The respondent stated that she presumed this hearing was to deal with one of those two Notices to End Tenancy.

I noted that I did not receive a copy of any Notice to End Tenancy or other documentary evidence from either party. The applicant stated that he had submitted a copy of the Notices to End Tenancy to the agency that receives documents on behalf of the Residential Tenancy Branch. The applicant attributed the lack of an Application for Dispute Resolution being served upon the respondent to a clerical error on part of the Residential Tenancy Branch.

The applicant stated that he had filed a total of three applications for three Notices to End Tenancy: two for himself and one for a different tenant in a different unit he was representing. I informed the parties that I had only one application before me and that it is for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent for the applicant. I asked the applicant to provide the file numbers for the other applications he filed and he was unable to do so.

The applicant proceeded to inform me that the landlord is his ex-common law spouse that he was with since 2002 and he has an interest in the property since he made renovations to the property. The applicant is of the position that he was served with Notices to End Tenancy by the respondent as a means to aggravate him as part of their separation.

The respondent stated that she and the applicant were in a relationship between 2010 through 2015 and acknowledged that they have a child together and were living together in the rental unit, a basement suite in a house owned by the respondent's parents, until she moved out.

I heard that the respondent had moved out of the rental unit, taking the children with her but then in January 2017 the children went back to the rental unit to live with the applicant.

The property manager became involved in February 2017 and the property manager acknowledged that there is no written tenancy agreement with the applicant. The property manager testified that several Intent to Rent forms had been submitted to Income Assistance while the applicant and respondent lived together so that rent would be paid to the respondent by Income Assistance on behalf of the applicant even though the respondent is not the owner of the property. However, the applicant stopped that arrangement and has made no rent payments to her for several months.

Where a party claims they have not been served with documentation, the party who was required to serve the documentation bears the burden to prove service occurred. I was unsatisfied that the respondent was served with a copy of the Application for Dispute Resolution. Further, the respondent was not served with a copy of the 10 Day Notice to End Tenancy for Unpaid Rent issued to the applicant and I find the respondent was not sufficiently put on notice as to the nature of this proceeding.

Also of consideration, is that my jurisdiction, as delegated by the Director of the Residential Tenancy Branch under the *Residential Tenancy Act*, is limited to disputes between a landlord and a tenant with respect to possession of a rental unit. My jurisdiction does not extend to roommate disputes, marital disputes, or disputes where an occupant may have interest in a property that is greater than possession under a tenancy agreement. It appears that there may be something other than a dispute between landlord and tenant in this case.

In light of the above, I declined to proceed to hear this application.

I do not provide an Order of Possession to the respondent as I am unsatisfied that I have jurisdiction over this dispute and if I did have jurisdiction I was unable to verify the 10 Day Notice meets the form and content requirements of the Act, as required in order for me to issue an Order of Possession under section 55 of the Act.

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 22, 2017

Residential Tenancy Branch