



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT, MNDC, ERP, RP, RR, OPR, MNR, FF

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and more time to make the application; orders for repairs and emergency repairs; and, authorization to reduce rent payable. The landlords applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent. One of the landlords appeared at the hearing; however, the tenants did not appear despite leaving the teleconference call open for approximately 30 minutes.

At the outset of the hearing, I proceeded to confirm service of hearing documents. The landlord confirmed that he received the tenant's Application for Dispute Resolution and Notice of Hearing and was prepared to respond to the application. Since the tenants failed to appear for their hearing, I dismissed their application without leave.

As for the landlords' hearing documents, the landlord testified that he had personally served the tenants with his Application for Dispute Resolution by Direct Request and Amendment to an Application for Dispute Resolution but that he did not serve them with a Notice of Hearing. The landlord stated that he did not receive a Notice of Hearing from the Residential Tenancy Branch (the Branch). Upon review of the Branch's records, I noted that it appeared that the landlords' original application was incorrectly accepted under the Direct Request procedure and after noticing the error a Notice of Hearing was emailed to the landlord. The landlord stated he did not receive an email with a Notice of Hearing. Upon further review of the Branch records and discussion with the landlord, I determined that the Branch's case management system reflected an incorrect email address for the landlord.

Rule 3.1 of the Rules of Procedure provides that a Notice of Hearing forms part of the hearing package and must be served upon the other party along with a copy of the Application for Dispute Resolution. The dispute resolution process is based on the

principles of natural justice and procedural fairness. In keeping with those principles, I was of the view that it would be unfair to hear the landlord's monetary claims against the tenants as the tenants have not been put on notice that the landlord's monetary claims would be heard at this time. Accordingly, I declined to proceed to hear the landlord's monetary claims and I dismissed the landlord's monetary claims with leave to reapply.

As far the landlords' request for an Order of Possession, an Order of Possession may be provided to a landlord where a tenant has disputed a Notice to End Tenancy, as provided under section 55(1) of the Act. Accordingly, I proceed to consider whether the landlords are entitled to an Order of Possession under section 55(1) of the Act.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession under section 55(1) of the Act?

Background and Evidence

In filing their Application for Dispute Resolution, the tenants had indicated that they were in receipt of a Notice to End Tenancy on April 13, 2017. The tenants provided a copy of both pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) signed by the landlord on April 13, 2017. The Notice includes a reason for ending the tenancy (unpaid rent of \$2,140.00 as of April 1, 2017), identifies the landlords and the tenants, provides for the address of the rental unit and the landlord's service address, and an effective date of April 23, 2017.

The landlord testified that the outstanding rent has not been satisfied and the tenants continue to occupy the rental unit.

Analysis

Section 55(1) of the Act provides as follows:

- 55** (1) 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.

Upon review of the 10 Day Notice, I am satisfied that it meets for form and content requirements of the Act. The tenants filed to dispute the 10 Day Notice but I have dismissed their application during the dispute resolution hearing. Accordingly, I find that all of the criteria of section 55(1) have been met and I must provide the landlords with an Order of Possession.

Provided to the landlords with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Conclusion

The tenants' application has been dismissed in its entirety and I have provided the landlords with an Order of Possession effective two (2) days after service upon the tenants under section 55(1) of the Act.

The landlords' monetary claim against the tenants has been dismissed 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: May 24, 2017

Residential Tenancy Branch