



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and damage pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing. The tenant attended with her son, who represented her at this hearing. The landlords both attended on separate lines. The tenant's agent testified that he had submitted evidence for this hearing however there was no documentary evidence from the tenant on file. Prior to the hearing, the landlord submitted four pages of evidence consisting of receipts for rent payment, copies of cheques from the tenant payable to the landlord.

Preliminary Issue: Failure to Submit Notice to End Tenancy (Evidence)

This tenancy began on November 25, 2016. No copy of the residential tenancy agreement was submitted as evidence at this hearing. The landlord testified that the tenant has not paid rent but continues to live in the unit. The landlord testified that, as of the date of this hearing, the tenant continues to fail to pay rent.

The parties agreed that a previous dispute resolution hearing was held with respect to this tenancy. During that previous hearing, a settlement agreement was reached between the two parties. The terms of the settlement agreement included that the tenant would pay the rental arrears owed for the period of June 25 to July 25, 2017; pay the rent when due for July 25 to August 25, 2017; and finally pay August 26 to August 31, 2017. The tenant agreed to vacate the rental unit on August 31, 2017. The landlord testified that, while the tenant had originally provided cheques as per the settlement agreement reached between the parties, the tenant had stopped payment on those cheques.

The landlord testified that, as a result of the tenant's ongoing failure to meet the terms of the settlement agreement and to pay rent, the landlord issued a 10 Day Notice to End Tenancy on July 8, 2017. The landlord did not submit a copy of the 10 Day Notice issued to the tenant. I note that the 10 Day Notice was available to the landlord to submit prior to this hearing.

After this hearing, the landlord provided a package of documentary evidence at the Residential Tenancy Branch. However, I have been provided with no proof that this documentary evidence was served to the tenant and further, this evidence has not been submitted in accordance with the Rule 3 of the Residential Tenancy Branch Rules of Procedure that provides the requirements of serving and submitting evidence. The following portions of Rule 3 apply to the evidence submitted after the hearing by the landlord/cross-applicant,

3.3 ...Evidence supporting a cross-application must:

- be submitted at the same time as the application is submitted, or within three business days of submitting an online Application ...;
- be served on the other party at the same time as the hearing package for the cross-application is served; and
- be received by the other party and the Residential Tenancy Branch ... not less than 14 days before the hearing.

... 3.11 ... Evidence must be served and submitted as soon as reasonably possible. ...

...3.14 Evidence not submitted at the time of Application for Dispute Resolution ... At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure...

... 3.19 ... No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator...In considering whether to admit documentary or digital evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting such evidence.

In considering the fairness of this hearing, I must determine that evidence has been provided in accordance with the Act and the other relevant legislation. If it has not been submitted in accordance with the Act, I must determine whether I am prepared to admit the documents submitted as late evidence.

In determining the validity of a notice to end tenancy itself, it is necessary for me to examine the notice and determine if it meets the criteria for a properly prepared notice to end tenancy in accordance with section 52 of the Act ("form and content of notice to end tenancy"). Section 68 of the Residential Tenancy Act indicates that a Notice to End Tenancy within the Dispute

Resolution Hearing process may be amended when it contains an error. In this case, the landlord did not merely omit or provide an incorrect date on the notice or misspell a name: the landlord has failed to provide the notice to end the tenancy in a manner consistent with the rules of procedure regarding this type of primary evidence.

The Notice to End Tenancy would provide some evidence of both service and the ground relied on by the landlord to end the tenancy. The tenant and the landlord both failed to provide the notice to examine and determine the content of the notice to end tenancy. As well, neither the tenant nor the landlord submitted a copy of the residential tenancy agreement prior to this hearing to provide the terms agreed upon for this tenancy.

Given the nature of their applications, I find that the tenant and landlord's failure to submit the Notice to End Tenancy in their cross applications are both fatal errors in the application process. I find that those errors are too central to allow the tenant's application to proceed. In the circumstances, I dismiss the tenant's application to cancel a notice to end tenancy and to recover the filing fee.

Generally, pursuant to section 55, I am obliged to issue an Order of Possession when the tenant is not successful in disputing a Notice to End Tenancy. Again, however, a requirement of section 55(1) is that the landlord's Notice to End Tenancy must meet the standards for form and content as required by section 52 of the Act. I have no evidence before me upon which to rely in granting an Order of Possession. Therefore, I find that the landlord is not entitled to an Order of Possession, a monetary order or recovery of the filing fee at this time.

Conclusion

I dismiss the tenant's application in its entirety.
I dismiss the landlord's application in its entirety.

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 7, 2017

Residential Tenancy Branch