



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants/applicants did not attend this hearing, although I waited until 11:40 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. Two representatives for the landlord attended the hearing and both were given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to an Order of Possession for the rental unit.

As this was the tenants, application, the landlords confirmed their service of the Notice to End Tenancy to the tenant and submitted that she should be deemed served based on her own application to cancel the Notice. I accept the undisputed testimony and submissions of the landlords with respect to service. I find the tenant was sufficiently served with the Notice to End Tenancy for Cause.

With respect to the tenant's failure to attend this hearing, Rule 7 of the Residential Tenancy Branch Rules of Procedure provides as follows:

7.1 ... The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 ...If a party or their agent fails to attend the hearing, the may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing to support his application and given the evidence provided at this hearing, **I order the tenant's application dismissed without liberty to reapply.**

Issue(s) to be Decided

As the tenants failed to attend, their application is dismissed. Pursuant to section 55, is the landlord entitled to an Order of Possession?

Background and Evidence

Both the representatives for the landlord testified that the tenants have lived, as a family in the rental unit since July 7, 2011 with a current rental amount of \$1060.93 and a security deposit of \$475.00 paid at the outset of the tenancy. The landlords did not submit any evidence for this hearing. As the tenants, in their application also did not provide a copy of the residential tenancy agreement, there was no written agreement in evidence.

At this hearing, the landlord made an oral application for an Order of Possession for Cause, relying on their undisputed and corroborated testimony as well as their 1 Month Notice to End Tenancy for Cause ("1 Month Notice") dated November 27, 2017. The landlords testified that the 1 Month Notice was served to one of the tenants' mothers (name provided) who is also residing in the rental unit. On the 1 Month Notice, the landlord provided the reasons that the tenancy should end including,

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

and that the Tenant has engaged in illegal activity that has, or is likely to result in disturbance or other consequences as described above.

At the hearing, the landlord's representatives did not provide any evidence to support the claim that any of the tenants had engaged in illegal activity. Each of the landlord's representatives testified that there have been multiple complaints about the tenants and that the tenants are involved in gang activity. The landlord's representatives described an incident that happened in the beginning of November 2017. Representative ML testified that she has viewed a security camera that shows one of the tenants being beaten outside the residential premises. Representative CM testified that, based on information from the security guard at the premises, there was an altercation between a number of parties but that he was not actually a witness – he was just told by other occupants who had called him to complain about the noise.

The landlord's representatives relied on an incident that occurred approximately 3 months ago. They did not provide evidence of ongoing noise disturbance or complaints. The landlord's representatives described a police incident where the only tenant present appears to have been the victim of an assault. While the landlord relies on section 55 of the Act and submits that the landlord is entitled to an Order of Possession, I provide section 55 to clarify the requirements for granting an Order of Possession under the Act,

Section 55(1) of the *Act* reads 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.

The tenant made an application to dispute the landlord's notice to end tenancy. The tenant did not attend to support his/her application. However, I find that the landlord has not met their burden in justifying their 1 Month Notice to End Tenancy. The form of the 1 Month Notice is correct however the content of the 1 Month Notice and the testimony provided by the two landlord's representatives does not provide me with the minimum of sufficient information in order to issue a Notice to End Tenancy for Cause. I find that the landlords did not provide sufficient evidence to support one of the grounds to end a tenancy upon which the landlord relies.

Therefore, despite the fact that I have dismissed the tenant's application, **I find the landlord is not entitled to an Order of Possession, pursuant to section 55(1).**

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is not entitled to an Order of Possession at this time.

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 23, 2018

Residential Tenancy Branch