



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL MND MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act"). The participatory hearing was held, via teleconference, on March 15, 2018.

The Landlord and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenant confirmed receipt of the Landlord's documentary evidence and Notice of Hearing package. The Tenant stated he did not provide any documentary evidence for this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Landlord's application with the exception of the following ground:

- An order of possession based on a 2-Month Notice to End Tenancy for Landlord's use of the property (the "Notice").

The Landlord is granted leave to reapply for any monetary compensation.

Issue to be Decided

- Is the Landlord entitled to an order of possession based on the Notice?

Background and Evidence

The Landlord testified that he served the Tenant, in person, with the Notice on September 30, 2017. The Landlord stated that he did not bring a witness when he served the Notice. The Landlord indicated that the reason for issuing this Notice was because he had sold the property and the purchaser had requested in writing that he make sure the Tenant is removed from the property before they took possession, which was on December 1, 2017.

The Tenant stated that the Landlord never gave him any Notice. The Tenant denies that the Landlord ever served him with the Notice as he alleges, and he wasn't sure exactly what was happening with the sale of the property.

The Tenant stated that he has not vacated the premises yet but he has lived there for 7 years and would need some extra time to move out. The Tenant stated that he will try to get out as soon as he can. The Landlord feels the Tenant has had more than enough time to move already.

Analysis

In this case, I note that the burden of proof is on the Landlord to prove that he has sufficiently served the Tenant with the Notice. Having considered the conflicting testimony on this matter, I find there is insufficient evidence to show that the Landlord served the Tenant with the Notice. The Landlord did not have any documentary or witness testimony to show that the Notice was served on September 30, 2017, as he has asserted. Ultimately, I am not satisfied the Notice has been served to the Tenant and I find it is of no force or effect. The Landlord must reserve the Tenant with a new

Notice, and be able to substantiate that it has been sufficiently served, in order for it to be effective.

The Landlord's application for an order of possession is dismissed, without leave to reapply. The Landlord is at liberty to re-issue a new Notice, if required. However, the Tenant has expressed that he is planning to move as soon as he can. I encourage both parties to continue to work together as best as possible until the tenancy ends.

As the Landlord's application was unsuccessful, I decline to award him the costs he incurred to file this application.

Conclusion

The Landlord is granted leave to reapply for monetary compensation. The Landlord's application for an order of possession based on the Notice from September 30, 2017, is dismissed, without leave to reapply.

The Landlord is at liberty to re-issue a new Notice, if required.

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 19, 2018

Residential Tenancy Branch