



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OPC, MNDCL, FFL

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy that the Application states was served on the tenant on March 1, 2018.

The Application for Dispute Resolution filed by the Landlord seeks the following:

- a. An order of Possession
- b. A monetary order
- c. An order to recover the cost of the filing fee.

The tenant(s) failed to appear at the scheduled start of the hearing which was 10:30 a.m. on May 9, 2018. Representatives of the landlord were present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenant failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The representatives of the landlord were given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Policy Guidelines provides that a party cannot avoid service by refusing to claim their registered mail. I find that the one month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on February 22, 2018 and that it was sufficiently served even though the tenant failed to pick up the registered mail package.

The tenant failed to include a copy of the one month Notice to End Tenancy with her materials. The landlord testified she sent a package of materials to the Residential Tenancy Branch by fax. I was not able to locate the materials during the hearing. The landlord did not advise the arbitrator that the landlord had filed an Application for Dispute Resolution. After the hearing was concluded I became aware of the landlord's application and materials in that file confirmed the oral testimony of the representatives of the landlord.

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy that was served on the Tenant on March 1, 2018?

Background and Evidence:

The parties entered into a written tenancy agreement on October 20, 2014 that provided that the tenancy would start on November 1, 2014. The rent is subsidized. The tenant presently pays \$644 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$393 at the start of the tenancy.

The landlord testified the tenant has paid the rent late for the following months: May 2017, June 2017, July 2017, August 2017, December 2017, January 2018 and February 2018. There have been late payments after that date but those late payments cannot be considered in determining the validity of a Notice to End Tenancy dated February 22, 2018.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant is repeatedly late paying rent

Analysis:

The Tenant applicant failed to appear at the hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

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

I waited 10 minutes after the scheduled start time before proceeding with the hearing. I accept the testimony of the landlord that the tenant has made 7 late rent payments since May 2017.

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy. I order that the tenancy shall end.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. I set the effective date of the Order of Possession for May 31, 2018 as the rent was paid by the tenant for May 2018. I determined the landlord has not reinstated the tenancy by accepting the rent payment as the landlord's conduct indicated it wanted to end the tenancy.

Landlord's Application:

The landlord is entitled to an Order of Possession based on the dismissal of the Tenant's application to cancel the one month Notice to End Tenancy. It is not necessary to make a second Order of Possession based on the landlord's application. I dismissed the landlord's claim for a monetary order and to recover the cost of the filing fee. The monetary order sought the recovery of the filing fee. It duplicates the claim to recover the filing fee. I determine it was not necessary for the claim to file this application as the landlord was entitled to an Order of Possession based on dismissal of the Tenant's claim.

Conclusion:

I dismissed the tenant's application and issued an Order of Possession effective May 41, 2018. I dismissed the landlord's application.

This decision is final and binding on the parties.

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 09, 2018

Residential Tenancy Branch