Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDCT OLC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice), pursuant to section 46 of the *Act*;
- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- an Order for the landlord to comply with the Act, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*; and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

The landlord, who was the respondent in this matter, appeared at the date and time set for the hearing of this matter. The tenant, who was the applicant in this matter, did not attend this hearing, although I left the teleconference hearing connection open until 9:51 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

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 reapply.

Accordingly, in the absence of any evidence or submissions from the tenant in this matter, I order the tenant's application in its entirety dismissed without liberty to reapply.

Preliminary Issue – Landlord's Request for an Order of Possession

As a result of the tenant's failure to attend the hearing to dispute the landlord's 10 Day Notice, the landlord requested an Order of Possession for the rental unit.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

In this case, I have dismissed the tenant's application in its entirety, without leave to reapply, as the tenant failed to attend the hearing to present his evidence. I must now determine if the landlord is entitled to an Order of Possession based on section 52 of the *Act*.

Section 52 of the *Act* provides that:

> 52 In order to be effective, a notice to end a tenancy must be in writing and must
> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> (e) when given by a landlord, be in the approved form.

In the matter at hand, neither party submitted a copy of the 10 Day Notice into evidence.

Although I have found that the tenant's Application is dismissed, I am unable to find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act,* as

the 10 Day Notice was not submitted into evidence for my review to determine if it complied with the requirements of section 52 of the *Act.*

Conclusion

As noted above, I dismiss the tenant's application in its entirety, without leave to reapply. I have not considered the merits of the application.

The landlord's request for an Order of Possession pursuant to section 55 of the *Act* is declined as the landlord was unable to prove that the 10 Day Notice complied with the form and content requirements of section 52 of the *Act*.

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 27, 2018

Residential Tenancy Branch