



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF, RR, LRE

Introduction and Conclusion

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on July 16, 2018 wherein the Tenant sought the following relief:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice");
- an Order that the Landlord:
 - comply with the *Residential Tenancy Act*, the *Regulation* or the tenancy agreement,
 - provide services or facilities required by law, and,
 - and be restricted from entering the rental unit; and,
- an order allowing the Tenant to deduct the cost of repairs, services or facilities from the rent.

The hearing was scheduled for 11:00 a.m. on September 7, 2018. Only the Respondent Landlord, S.L., called into the hearing.

The Tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:13 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Analysis and Conclusion

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

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.

As the Tenant did not call into the hearing by 1:13 p.m., and the Landlord called in and was ready to proceed, I dismiss the Tenant's claim without leave to reapply.

Neither party submitted a copy of the Notice for my review. Although the Landlord testified that the Notice was issued on July 11, 2018 and indicated that the outstanding rent at the time was \$1,870.00, she conceded she was providing that information on memory alone as she did not have a copy of the Notice in front of her.

In the normal course, a Landlord would be entitled to an Order of Possession pursuant to section 55 of the *Act* in the event I dismissed the Tenant's application to cancel the Notice; however section 55 mandates that I must be satisfied that the Notice complies with section 52 as it relates to form and content. As the Notice was not before me and the Landlord could not provide me testimony as to its contents, I am unable to grant the Order of Possession. For clarity I reproduce the relevant portions of section 55 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 Landlord is at liberty to apply for an Order of Possession on the basis that the Tenant's Application to cancel the Notice has been dismissed.

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 07, 2018

Residential Tenancy Branch