



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC (Upstairs Tenants' Application)
 FFL, OPC (Landlord's First Application)
 FFL, OPC (Landlord's Second Application)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

Tenants D.K., A.K. and C.P. (the "Upstairs Tenants") filed their application July 10, 2018 (the "Upstairs Tenants' Application"). The Upstairs Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated June 30, 2018 (the "Notice").

The Landlord filed two applications August 2, 2018. The first application relates to the Upstairs Tenants. The Landlord sought an Order of Possession based on the Notice and reimbursement for the filing fee (the "Landlord's First Application"). The Landlord also filed an application in relation to Tenant C.P. (the "Downstairs Tenant"). The Landlord sought an Order of Possession based on a One Month Notice to End Tenancy for Cause and reimbursement for the filing fee (the "Landlord's Second Application"). The Landlord requested that these applications be heard with the Upstairs Tenants' Application.

The Downstairs Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord or Upstairs Tenants. I waited twelve minutes, until 9:42 a.m., to allow the parties to call into the conference and participate in the hearing. At 9:40 a.m., I confirmed from the teleconference system that the Downstairs Tenant and I were the only two people who had called into this teleconference.

The Downstairs Tenant provided the correct spelling of his last name and this is reflected in the style of cause.

The Downstairs Tenant advised that he has a hearing set for tomorrow in relation to his dispute of the One Month Notice to End Tenancy for Cause.

I advised the Downstairs Tenant that I would be dismissing the Landlord's Second Application. I told the Downstairs Tenant that he should still call into his hearing set for tomorrow.

The Landlord called the Residential Tenancy Branch after the hearing. The Landlord said his documents state the hearing was for 11:00 a.m. on September 6, 2017.

I have reviewed the Notices of Hearing for all three file numbers and all three state the hearing is at 9:30 a.m. on September 6, 2018. Further, it appears the Landlord uploaded a document with his evidence that is a written note listing the Upstairs Tenants names and then "Thursday September 6/2018 at 9:30 a.m.". Below this is the Downstairs Tenant's name and "Friday Sept 7/2018".

Rule 7.3 of the Rules of Procedure (the "Rules") states that an arbitrator can conduct the dispute resolution hearing or dismiss the application with or without leave to re-apply if a party does not attend the hearing.

Pursuant to rule 6.6 of the Rules, the Landlord had the onus in this hearing to prove the grounds for the notices to end tenancy.

Given the Landlord failed to appear at the hearing, I dismiss the Landlord's First Application and Landlord's Second Application without leave to re-apply. The Notice is therefore cancelled. The tenancy for the Upstairs Tenants will continue until ended in accordance with the *Residential Tenancy Act* (the "Act").

I also dismiss the Upstairs Tenants' Application without leave to re-apply. This would usually trigger section 55(1) of the *Act* and require me to issue an Order of Possession based on the Notice. However, the Landlord applied for an Order of Possession based on the same Notice, this application has been dismissed and the Notice has been cancelled given the Landlord failed to attend the hearing. Further, I would not have issued an Order of Possession pursuant to section 55(1) of the *Act* as it was the Landlord's onus to prove the Notice complies with section 52 of the *Act* and the Landlord has not done so as the Landlord did not attend the hearing.

I note that the only One Month Notice to End Tenancy for Cause submitted on all three applications is addressed to Tenant A.K. and D.K. There is no One Month Notice to End Tenancy for Cause addressed to Tenant C.P., one of the Upstairs Tenants, or the Downstairs Tenant.

I have cancelled the Notice which is addressed to Tenant A.K. and D.K. If this is the same One Month Notice to End Tenancy for Cause disputed by the Downstairs Tenant in his application set for hearing tomorrow, the Notice has been cancelled. If a different One Month Notice to End Tenancy for Cause has been issued to the Downstairs Tenant, that notice will be addressed at the hearing tomorrow.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 06, 2018

Residential Tenancy Branch