



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, OLC, RP, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order regarding a disputed rent increase pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 15 minutes. Tenants RL and MM (collectively "the tenant") attended the hearing along with their agent. The attending parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Application

The tenant testified that on October 10, 2018 she forwarded the tenants' application for dispute resolution hearing package via registered mail to the landlord. The tenants provided a Canada Post receipt that indicates the tenants served the landlord by Xpresspost. The Xpresspost receipt does not indicate that the tenants selected the signature option for this mailing.

Section 89 of the *Act* establishes that when a tenant serves an application for dispute resolution it must be served by leaving it directly with the landlord or by registered mail. Section 1 of the *Act* defines registered mail as any method of mail delivery provided by Canada Post that confirms delivery to a named person.

Xpresspost service by Canada Post does not require a signature for confirmation to a named person unless that option is selected. Without this extra service, Xpresspost does not meet the definition of registered mail. Accordingly, I find that the tenants have not served the landlord pursuant to subsection 89 of the *Act*. As the tenants cannot prove service upon the landlord, the tenants' application is dismissed with leave to reapply.

Preliminary Issue – Adjournment Request

Upon notification that their application would be dismissed, the tenants requested an adjournment.

Rule 7.9 of the *Residential Tenancy Branch, Rules of Procedure* sets out the criteria an arbitrator will consider when granting or denying a party's request for an adjournment. Specifically the arbitrator is to consider the oral or written submissions of the parties; the likelihood of the adjournment resulting in a resolution; the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; whether the adjournment is required to provide a fair opportunity for a party to be heard and the possible prejudice to each party.

I find the perceived need for the adjournment is a direct result of the tenants' neglect to serve the application in accordance with the *Act*. For this reason, I deny the tenants request for an adjournment.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Accordingly, I must determine whether the landlord is entitled to an order of possession.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the tenants, the tenancy began on December 1, 2004 on a month-to-month basis. Rent in the amount of \$1,005.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$400.00 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

A 1 Month Notice was issued to the tenants on September 26, 2018 by way of posting to the rental unit door where the tenants reside. The notice indicates an effective move-out-date of October 31, 2018. The tenants confirm receipt of the 1 Month Notice.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As stated above, if the tenant files an application to dispute the notice within time, but the application is dismissed, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content.

Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the notice before me, I find the 1 Month Notice complies in form and content. As the tenants' application has been dismissed I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenants' application is dismissed.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

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: November 09, 2018

Residential Tenancy Branch