



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, OLC; OPM, OPC, FFL

Introduction

This hearing dealt with the tenant's 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 to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62.

This hearing also addressed the landlord's cross application for:

- an order of possession based on a written Mutual Agreement to End Tenancy (the "Mutual Agreement") pursuant to section 55;
- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, the tenant confirmed that she had received the landlord's application and evidence. As the tenant did not raise any issues regarding service of the application and evidence, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Service of Tenant's Application

The tenant testified that she personally served the landlord's assistant with the tenant's application for dispute resolution hearing package ("application") on October 18, 2018,

at the office. The landlord presented his assistant as a witness. She testified that she did not receive the tenant's application as she was not working this date.

In response, the tenant clarified that she was uncertain of whom she served it to, but was sure it was October 18, 2018. The landlord testified that he received two factsheets from the tenant, in the office on October 21, 2018, but not an application.

Based on the first hand witness testimony of the landlord's assistant and the tenant's changing testimony, I am satisfied that the tenant failed to serve the application. For this reason, the tenant's application is dismissed.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on a written mutual agreement to end tenancy?

Is the landlord entitled to an order of possession for cause?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2017 on a fixed term until March 31, 2018 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$715.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$345.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

On February 25, 2018 a Mutual Agreement was signed by the landlord and tenant. This form indicates the tenant agreed to vacate the rental unit by September 30, 2018 at 1:00 p.m. The landlord provided a copy of the signed form. The tenant acknowledged signing the Mutual Agreement.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 44 of the *Act* establishes that a tenancy may end if the landlord and tenant agree in writing to end the tenancy. The tenant and landlord agreed in writing that the tenancy would end on or before September 30, 2018. The landlord was entitled to possession of the rental unit on that date. As that has not occurred, the landlord is entitled to a two-day order of possession for the rental unit.

As a finding has been made in relation to the Mutual Agreement, and the tenancy is set to end, a finding on the 1 Month Notice is not required. This portion of the landlord's claim is dismissed without leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

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

I dismiss the landlord's application for an order of possession for cause, without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$100.00 against 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 15, 2018

Residential Tenancy Branch