



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant's agent attended as the representative of the Estate of the deceased Tenant E.M.

Under section 1 of the *Act* the definition of "tenant" includes:

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

As both parties were present, service of documents was confirmed. The tenant's agent testified that he personally served the landlord with the notice of this hearing on October 16, 2018, which was confirmed by the landlord. Therefore, I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

The landlord testified that she received the tenant's evidence late but had an opportunity to review it. The tenant confirmed receipt of the landlord's evidence. As such, I deem the evidence in this matter sufficiently served pursuant to section 71(2)(b) of the *Act*.

Preliminary Issue – Naming of Parties on Application

The parties confirmed that there is no written tenancy agreement, only a verbal tenancy agreement. The parties confirmed that the original verbal tenancy agreement, estimated to have started in 2001, was between the now deceased Tenant E.M. and her co-tenant friend.

In 2008, the co-tenant friend passed away, leaving only Tenant E.M. as a tenant. Soon after, in 2008, Tenant E.M.'s son "J.M." moved in to assist in taking care of his mother. The landlord testified that J.M. was considered a co-tenant under the verbal tenancy agreement as the landlord stated that both Tenant E.M. and co-tenant J.M. paid rent to her. Tenant E.M. passed away on June 28, 2018 leaving co-tenant J.M. and the Estate of Tenant E.M. as tenants to the verbal tenancy agreement.

The tenant's agent, who is the other son of Tenant E.M., stated that he is the Executor of the Estate of Tenant E.M., however he submitted no documentary evidence that he had been granted probate letters or Letters of Administration for the estate. However, it was not disputed by the landlord that the tenant's agent is a son of the deceased Tenant E.M. and as such I accept that the tenant's agent is acting as the personal representative for the Estate of Tenant E.M.

Residential Tenancy Branch Policy Guideline #43. Naming Parties provides guidance on naming parties to an Application for Dispute Resolution. Under Section D. Naming an Estate of a Person Who Has Died, it states as follows, in part:

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named.

...

At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

Therefore, pursuant to my authority under section 64(3)(c) of the *Act*, I have amended the tenant's Application to correctly reflect the named Applicant in this matter.

Preliminary Issue – Outcome of November 19, 2018 Dispute Resolution Hearing

The landlord testified that on November 19, 2018, she had attended a dispute resolution hearing in relation to the rental unit which is the subject of the current dispute resolution hearing. The landlord provided the file number related to that dispute resolution hearing (I have noted this file number on the cover sheet of this Decision).

The landlord testified that co-tenant J.M., who is the co-tenant of the Estate of Tenant E.M. as explained earlier in this Decision, applied to dispute a One Month Notice to End Tenancy for Cause that the landlord had issued to him. The landlord testified that she had not yet received a Decision regarding the outcome of that hearing. I advised the parties that an adjournment of the current hearing may be required pending the outcome of the earlier hearing. However, I decided to receive the parties' submissions in relation to the matter before me, so that I could render a decision on the basis of this matter in the event that a decision was not rendered in the earlier hearing.

After the hearing, I accessed the file number provided by the landlord for the November 19, 2018 dispute hearing and found that a decision had been rendered on November 19, 2018, the same day as the hearing. The arbitrator dismissed co-tenant J.M.'s application for dispute as he failed to attend the hearing. As a result of the dismissal of co-tenant J.M.'s application, pursuant to section 55 of the *Act*, the arbitrator was required to grant an Order of Possession to the landlord.

As such, I find that I have no standing to make a determination in the current matter, given that a previous proceeding before the Residential Tenancy Branch on November 19, 2018, related to the same rental unit and the same tenancy agreement in question, resulted in an arbitrator determining that an Order of Possession be granted to the landlord, ending the tenancy. The arbitrator noted in that decision that the effective vacancy date of the notice to end tenancy had already passed. Therefore, the landlord was granted an Order of Possession effective two days after service of the Order upon the tenant.

Therefore, I find that the current application before me is moot as a decision has already been rendered on November 19, 2018 issuing an Order of Possession to the landlord for the rental unit and tenancy agreement under dispute in this matter.

As such, the application before me is dismissed without leave to reapply.

Conclusion

This application is dismissed without leave to reapply as the landlord has already been granted an Order of Possession pertaining to the rental unit and tenancy agreement in this matter, thereby ending the tenancy. The final and binding decision issued on November 19, 2018, pertaining to this tenancy remains in effect.

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 27, 2018

Residential Tenancy Branch