



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, AS, ERP

Introduction and Preliminary Matters

On October 12, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for End of Employment, for an order to allow a sublet, and for an order for emergency repairs. The matter was set for a participatory hearing via conference call.

The Tenants were emailed a copy of the Notice of a Dispute Resolution Hearing by the Residential Tenancy Branch on October 16, 2018. The Tenants; however, did not attend the teleconference hearing set for this date at 09:30 a.m. The phone line remained open for 18 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord who indicated that they were ready to proceed. I have confirmed that the file audit records indicate that the Tenants did not make any attempt to cancel the hearing prior to the start. I have also confirmed that the date, time and codes for the teleconference were correct and that the only persons showing on the teleconference system was the Landlord and myself.

After keeping the phone line open for 18 minutes, I dismissed the Tenants’ Application without leave to reapply as the Tenants failed to attend the hearing to present the merits of their Application or, at the very least, cancel their scheduled hearing in advance of the hearing.

Issue to be Decided

As the Tenant’s Application has been dismissed; should an Order of Possession be issued to the Landlord, in accordance with Section 55 of the Act?

Background and Evidence

The Landlord testified that he has been dealing with continual late rent from the Tenants and has been issuing 10-Day Notice to End Tenancies on a monthly basis; however, the Tenants usually end up paying their rent, albeit it late.

The Landlord stated he issued a 10-Day Notice to End Tenancy for Unpaid Rent, dated October 2, 2018 (the "Notice"), on October 2, 2018, by placing the Notice on the door. The Tenants paid the rent on October 5, 2018.

The Landlord was not sure why the Tenant applied to cancel the Notice. The Landlord stated that the Tenant has failed to pay her rent for November 2018 and he has subsequently issued another 10-Day Notice to End Tenancy.

Analysis

Section 55 of the Act requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a Notice to End Tenancy that is compliant with the Act.

In this case, I find that the Application for Dispute Resolution has been abandoned by the Tenants and is dismissed.

Although the Tenants did not attend to confirm, I assume the Tenants applied for Dispute Resolution on October 12, 2018, in response to the above Notice, dated October 2, 2018, and to address the other issues in the Application.

I accept the Landlord's testimony that the Tenants paid their rent for October 2018 within the timelines set out in the Notice; therefore, I find that the Notice is invalid.

I find that the Landlord is not entitled to an Order of Possession, as the Notice is no longer valid.

The Landlord was directed to the Residential Tenancy Branch for further information on how to proceed.

Conclusion

I dismiss the Application for Dispute Resolution without leave to reapply.

The Landlord is not entitled to an Order of Possession, in accordance with Section 55 of the Act.

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 23, 2018

Residential Tenancy Branch