



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a Notice to End Tenancy dated October 30, 2018
- b. An order to recover the cost of the filing fee.

The tenant(s) failed to appear at the scheduled start of the hearing which was 11:00 a.m. on December 21, 2018. The landlord was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the scheduled start time in order to enable the tenant to call in. The tenant(s) failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The landlord was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

Preliminary Issue – Jurisdiction:

The landlord testified that she is the owner of the rental property but she does not live at the property. Further, she has an agent who is living in the property and representing her interest. The tenant has rented a room and shares kitchen and bathroom accommodation.

Section 4(1)(c) of the Act states:

“What this Act does not apply to

4. This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,”

I determined that as the owner is not living in the property this shared living accommodation is not excluded under section 4(1)(c). As a result I determined that the Act applies and I have jurisdiction to consider this matter.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Applicant failed to appear and the Respondent was present I ordered the application dismissed without liberty to reapply.

Refusal to grant an Order of Possession:

The form of notice used by the landlord does not comply with section 52 of the Act as the landlord has not used the approved government form. Section 52 provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form. (my emphasis)**

Section 55(1) of the Residential Tenancy Act provides

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and (my emphasis)

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I determined that I could not grant an Order of Possession as the Notice to End Tenancy dated October 30, 2018 did not comply with section 52 and that I had no authority to grant such an order.

The parties are urged to seek advice from their solicitor or information for the Residential Tenancy Branch. .

This decision is final and binding on the parties.

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: December 21, 2018

Residential Tenancy Branch