



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on December 12, 2018 (the "Application"). The Applicant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2018 (the "Notice").

The Agents appeared at the hearing for the Landlord. The Agent was personally named on the Application as the Landlord. I noted that a company is named on the Notice as the Landlord. The Agent advised that he is a representative for the company named on the Notice which acts as agent for the Landlord. The Agent provided the name of the Landlord and I amended the Application to reflect this. This is also reflected in the style of cause.

Nobody appeared at the hearing for the Applicant. I waited 10 minutes to allow the Applicant or a representative of the Applicant to call into the hearing; however, nobody did. I proceeded to hear from the Agent in relation to the situation with this tenancy.

The Agent advised that the Applicant is still living at the rental unit. He said the Applicant is not actually a tenant but an occupant. He explained that the tenant of the rental unit was the Applicant's mother and the Applicant lived with her. The Agent advised that the tenant passed away in November of 2018.

The Agent advised that the Landlord was granted an Order of Possession for the rental unit on January 3, 2018 on a previous file. The Agent advised that the Landlord has obtained a writ of possession from the Supreme Court.

Given that the Landlord had received an Order of Possession on the previous file, the Landlord did not seek an Order of Possession in relation to this file.

Rule 7.3 of the Rules of Procedure states as follows:

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.

Here, the Applicant failed to attend the hearing and provide a basis for, or evidence regarding, the dispute of the Notice. In the absence of evidence from the Applicant regarding the basis for the dispute of the Notice, the Application is dismissed without leave to re-apply.

Section 55(1) of the *Residential Tenancy Act* (the “*Act*”) requires an arbitrator to issue an Order of Possession if a tenant applies to dispute a notice to end tenancy, the application is dismissed and the notice complies with section 52 of the *Act*.

However, here the Agent did not seek an Order of Possession for the rental unit as the Landlord has already been issued an Order of Possession on the previous file. Therefore, I have not considered the Notice or whether an Order of Possession should be issued under section 55 of the *Act*.

I note that I have not made a decision on whether the Applicant is a tenant under the tenancy agreement or an occupant as submitted by the Agent as it is not necessary for me to do so in the circumstances.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord did not seek an Order of Possession and therefore I have not considered whether the Landlord is entitled to one under 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 *Act*.

Dated: January 17, 2019

Residential Tenancy Branch