



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the “Act”) in response to two successful applications filed by the tenant for review. In the original decision, dated October 1, 2018 the landlord was granted an order of possession. In the first review consideration decision dated October 23, 2018 the tenant was granted a review hearing on the basis that the tenant was unable to attend the original hearing because of circumstances beyond her control. The original decision and order of possession were confirmed by way of a review hearing decision dated December 5, 2018.

In the second review consideration decision dated December 21, 2018 the tenant was granted a review hearing on the basis of fraud. The review hearing decision dated December 5, 2018 and original order of possession dated October 1, 2018 were subsequently suspended pending the outcome of this review hearing. This review hearing was scheduled to address the tenant’s application pursuant to section 47 of the *Act* to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated July 31, 2018.

The tenant, the tenant’s advocate (collectively “the tenant”) and the landlord’s legal counsel (the “landlord”) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Adjournment Request

The landlord’s legal counsel presented that he had only been retained last week and needed additional time to prepare, he requested an adjournment.

Rule 7.9 of the *Residential Tenancy Branch, Rules of Procedure* sets out the criteria an arbitrator will consider when granting or denying a party’s request for an adjournment. Specifically the arbitrator is to consider the oral or written submissions of the parties; the likelihood of the adjournment resulting in a resolution; the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; whether the adjournment is required to provide a fair opportunity for a party to be heard and the possible prejudice to each party.

I find the perceived need for the adjournment is a direct result of the landlord’s neglect to obtain legal counsel at an earlier date and it would unfairly prejudice the tenant to reschedule the hearing on this basis. For this reason, I denied the landlord’s request for an adjournment.

Preliminary Matter – Tenant Vacated

At the outset of the hearing, the parties agreed that a recent decision was rendered on January 10, 2019 regarding this tenancy. The file number has been included on the front page of this decision for ease of reference. In the January 10, 2019 decision, the parties agreed that the tenant had vacated the rental unit December 17, 2018 and the landlord had possession of the rental unit. The tenant's application to cancel the 10 Day Notice for Unpaid Rent ("10 Day Notice") was dismissed without leave to reapply. The tenant testified that she had vacated the rental unit on December 17, 2018 but now seeks to reinstate the tenancy.

Pursuant to section 44 of the *Act*, I find that the tenancy ended when the tenant vacated the rental unit on December 17, 2018. This hearing was scheduled to address the tenant's application to cancel the 1 Month Notice by way of a review consideration decision, as such I do not have the authority to reinstate the tenancy which was ended by the tenant vacating the unit. The tenant is at liberty to file a separate application to obtain an order of possession.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Conclusion

As the tenancy has ended, the tenant's application is moot. The decision and order of possession are set aside.

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: January 23, 2019

Residential Tenancy Branch