



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPC, FFL
For the Tenants: CNC, CNR

Introduction

This hearing dealt with Applications for Dispute Resolution (“Applications”) by both Parties seeking remedy under the *Residential Tenancy Act* (“Act”). The Landlord requested an order of possession based on a One Month Notice to End Tenancy for Cause, dated January 10, 2019 (“One Month Notice”), and to recover the cost of the filing fee. The Tenants applied to cancel the One Month Notice and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”).

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 section 52 of the *Act*.

The hearing was conducted by teleconference. The Landlord and his wife, JP, and the Landlord’s property managers, D.D. and M.G. attended and were available to give affirmed testimony. During the hearing, the Landlord provided affirmed testimony. The Landlord was given the opportunity to make submissions as well as present oral and written evidence. A summary of the evidence is provided below and includes only that which is consistent with the Rules of Procedure and relevant to the hearing.

The Tenants, M.J. and A.A. did not attend the teleconference hearing. I kept the teleconference line open for 17 minutes from the time the hearing was scheduled until it was ended, to allow the Tenants the opportunity to call in. The teleconference system indicated that only the Landlord and I had called into the hearing. I confirmed that the correct call-in number and participant code had been provided to the Tenant.

Preliminary and Procedural Matters

I note that the Landlord identifies the Tenants as A.J. and A.A. in the Notice of Dispute Resolution Proceeding form; however, on the tenancy agreement, they are identified as M.J. and A.A. Further, in an Application by one of the Tenants seeking to cancel the Landlord's One Month Notice, the Tenants are represented by only one of them, who identified himself as M.A.J. In the hearing, I asked the Landlord if A.J. and M.J. and M.A.J. are all the same person, whom the Landlord referred to as "Mike"; the Landlord said that they are all one person. As a result, I find that the male Tenant in the matter before me known as A.J., M.J. and M.A.J. are one in the same person.

The Landlord testified that he served the Tenants with his Application for Dispute Resolution and supporting documents ("Notice of Hearing") by registered mail on January 25, 2019. The Landlord provided the Canada Post tracking number for the registered mail. Pursuant to Sections 89 and 90, I find that the Tenant was served on January 30, 2019, the 5th day after mailing.

Further, if the Tenant M.A.J. did not receive the Notice of Hearing, he disputed the Landlord's One Month Notice by filing his own Application for Dispute Resolution on January 22, 2019; also, the Tenant's Application was crossed with the Landlord's Application before me. Accordingly, I find that the Tenant M.A.J. was provided with the hearing information, including date, time, and teleconference numbers in his own Application package.

In the hearing, the Landlord confirmed that he had received the Tenant's Application and documentary evidence on January 29, 2019, but he said he did not receive the Tenant's Amendments; the Amendments were submitted to the Residential Tenancy Branch 14 days prior to the hearing, but not served on the Landlord. Accordingly, I have not considered the Amendments.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Based on the above, and as the Landlord and I attended the hearing on time and ready to proceed, I commenced the hearing as scheduled despite the absence of the Tenants.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the One Month Notice?
- Is the Tenant entitled to an order cancelling the One Month Notice?
- Is the Landlord entitled to be reimbursed for the filing fee?

Background and Evidence

At the outset of the hearing, the Landlord told me that he already had an order of possession for the rental unit, from a direct request application he had made with the Residential Tenancy Branch regarding a 10 Day Notice to End Tenancy for Unpaid Rent, dated February 2, 2019. The Landlord also said he already had a Writ of Possession, but that he attended this hearing to make sure everything was in order. I informed the Landlord that he could proceed with enforcing the order of possession he had and that he could use the services of a bailiff, if necessary.

Analysis

I have found that the Tenant is deemed to have received the Landlord's Application and documentary evidence on January 30, 2019, so pursuant to section 47(4) of the *Act*, he had 10 days to dispute the Landlord's Application with the Residential Tenancy Branch. On January 23, 2019, the Tenant applied for dispute resolution to dispute the One Month Notice. However, he did not provide any reasons for why the One Month Notice should be cancelled. In his handwritten submission dated January 16, 2019, the Tenant, M.A.J., referred to an encounter he had with the Landlord when the Landlord attended the rental unit. The Tenant did not explain how the comments in this document were relevant to the Landlord's Application that the Tenant had applied to cancel.

Based on these considerations, I find that the Tenant's Application is without merit and I dismiss it without leave to reapply.

I find that the order of possession that was issued to the Landlord is warranted in this situation, but since the Landlord has already received an order of possession for the rental unit, I decline to issue a second order of possession.

Given the evidence before me, overall, I dismiss the Landlord's Application with leave to reapply, and I dismiss the Tenant's Application without leave to reapply. As I have

dismissed the Landlord's Application, I do not order recovery of the filing fee.

Conclusion

I dismiss the Landlord's Application with leave to reapply and I dismiss the Tenant's Application without leave to reapply. The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 12, 2019

Residential Tenancy Branch