



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

I was designated to hear this matter pursuant to section 58 of the *Residential Tenancy Act* (the *Act*). The tenant applied pursuant to section 46 of the *Act* for the cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice).

The Respondent called into this teleconference hearing at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 11:24 a.m. to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Respondent and I were the only persons who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the Applicant, I order the application dismissed without liberty to reapply.

Landlord DK (the landlord) confirmed that the tenant handed one of the landlord's representatives a copy of the tenant's dispute resolution hearing package on or about May 6, 2019. I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. As the landlord testified that the landlord's written evidence for this hearing and a review hearing of a related matter scheduled to be heard on June

24, 2019, have been served to the tenant, I am satisfied that this has occurred pursuant to section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession

Background and Evidence

This tenancy began as a fixed term tenancy for a rent geared to income unit in a single room occupant building on November 1, 2013. When the fixed term expired on March 31, 2014, the tenancy continued as a month-to-month tenancy.

The landlord has issued a number of 10 Day Notices with respect to this tenancy.

On May 2, 2019, an Adjudicator appointed pursuant to the *Act* considered the landlord's application for an Order of Possession using the RTB's Direct Request process with respect to a 10 Day Notice the landlord's representatives maintain they posted on the tenant's door on April 8, 2019. Although the landlord received a 2 Day Order of Possession from the Adjudicator (see RTB File # above), the tenant successfully applied for a review consideration of that decision. On May 9, 2019, an Arbitrator appointed pursuant to the *Act* allowed the tenant's application to have the Adjudicator's May 2, 2019 suspended until such time as a new participatory review hearing could be conducted. That hearing is scheduled for June 24, 2019, three days from today.

The tenant did not attach a copy of the 10 Day Notice they were asking to have set aside in the current application before me. Although the tenant referenced a 10 Day Notice received on May 1, 2019, there are also references to 10 Day Notices of April 8, 2019, the Notice that is scheduled to be considered at the review hearing on June 24, 2019, and one of March 12, 2019. At the hearing, the landlord testified that the landlord has not issued any 10 Day Notice since the Notice was posted on the tenant's door on April 8, 2019. The landlord testified that they believed that the tenant was referring to the 10 Day Notice of April 8, 2019 when the tenant submitted the application for dispute resolution on May 3, 2019, seeking the cancellation of a 10 Day Notice from the landlord.

Analysis

Section 55(1) of the Act reads as follows:

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

Section 52 of the Act reads in part as follows:

In order to be effective, a notice to end 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, and*
- (e) when given by a landlord, be in the approved form.*

In this case, It is unclear which 10 Day Notice, the tenant was attempting to have set aside when the tenant applied for cancellation of a 10 Day Notice on May 3, 2019. As there are three possibilities, and no evidence of any 10 Day Notice of May 1, 2019, the date cited in the tenant's application, I am not in a position to properly determine which 10 Day Notice is properly before me. This makes it difficult for me to assess whether the landlord's 10 Day Notice meets the requirements of section 52 of the Act.

While it is likely that the 10 Day Notice the tenant was referencing in this application was the 10 Day Notice of April 8, 2019, there is already a review hearing scheduled for the next working day following my hearing of the tenant's application. At the current hearing, the landlord testified that they preferred to wait for a determination of the outcome of the review hearing on June 24, 2019 in order to obtain a valid Order of Possession.

For these reasons, I dismiss the tenant's application, but issue no Order of Possession in the landlord's favour with respect to the dismissal of the tenant's current application.

I emphasize that my decision has no bearing or impact on the matters to be considered during the review hearing scheduled for June 24, 2019.

Conclusion

I dismiss the tenant's application without leave to reapply.

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: June 21, 2019

Residential Tenancy Branch