



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR FFT LRE OLC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46;
- Authorization to recover the filing fees from the landlord pursuant to section 72;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenant to call into 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. I also confirmed from the teleconference system that the landlord, her witness and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified the tenant moved out of the rental unit on or before September 28, 2019. The landlord provided a copy of a text message sent by the tenant indicating she has moved out.

Rule 7.3 of the Rules of Procedure provides that 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. Rule 7.4 states

that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenant did not attend the hearing which was scheduled by conference call at 11:00 a.m. and concluded at 11:10 a.m. As she did not attend, she did not present evidence regarding the merits of her claim for me to consider.

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

As the tenant was not successful in her claim, she will not recover her filing fee.

Section 55 of the Act reads:

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.

I have examined the landlord's notice and find that with the exception of the effective date stated, it complies with the form and content provisions of section 52 of the *Act*, which states that the notice 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.

The effective date was not stated in the landlord's notice, however the effective date is automatically changed to September 16, 2019, ten days after the tenant received the Notice in accordance with section 53 of the Act. As this date has passed and since the tenant has already moved out of the rental unit, the landlord is entitled to an Order of Possession effective immediately.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is entitled to an Order of Possession effective forthwith.

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: November 15, 2019

Residential Tenancy Branch