



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OLC,RP,FFL,OPM

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession for mutual agreement to end tenancy pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- cancel a one month notice for cause pursuant to section 47;
- an order for regular repairs pursuant to section 62;
- authorisation to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord attended via conference call hearing. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although I left the teleconference hearing connection open to enable the tenant to call into the teleconference hearing scheduled for 9.30 a.m.

The landlord testified the tenant was served the Notice of Dispute Resolution Proceeding together with the evidentiary materials in person. Accordingly, I find the tenant was served on September 30, 2019, with the hearing documents in accordance with section 88 and 89 of the *Act*.

The landlord testified that he had not received the tenant's Notice Dispute Resolution Proceeding and evidentiary package.

Preliminary issue: The tenants' attendance

Rules of Procedure 7.3 states:

7.3 Consequences of not attending the hearing. 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.

I dismiss the tenant's application without leave to reapply for non-attendance.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord seeks an order of possession as a result of the mutual agreement to end the tenancy dated August 09, 2019, effective August 31, 2019.

On August 9, 2019, the tenant attended the landlord's unit and told him that she wanted to end the tenancy at the end of the month. He testified that he accepted this and asked her to sign a Mutual Agreement to End Tenancy (form RTB-8).

The tenant and the landlord each signed this agreement, which required the tenant to vacate the rental unit on August 31, 2019 by 1:00 pm. The landlord entered a copy of this agreement into evidence.

The landlord testified that the tenant failed to vacate the rental unit on August 31, 2019 as agreed. He testified that she continues to remain in the rental unit and that she has paid her rent for the months of September, October and November 2019. Landlord testified that he has accepted the rent for "use and occupancy only" He testified that the tenant has not paid the December rent.

At the hearing, the landlord stated that he seeks an order of possession effective December 31, 2019.

Analysis

There was no representation or attendance by the tenant at the hearing. I find that a mutual agreement to end tenancy was entered into by both parties on August 09, 2019. I accept the landlord's testimony that the tenant wished to end the tenancy and agreed to sign the mutual agreement.

Section 44(1)(c) of the *Act*, allows for the landlord and tenant to agree in writing to end the tenancy. In this case, both parties used the Residential Tenancy Branch RTB-8 form to end the tenancy.

I find that the mutual agreement to end tenancy is a valid agreement between the parties and in compliance with the *Act*.

I accept the landlord's testimony that the tenant has not yet vacated the rental unit, in breach of the mutual agreement to end tenancy. I find that the tenant was obligated to vacate the rental unit on August 31, 2019, and that she failed to do this.

As such, the landlord is entitled to an order of possession, pursuant to section 55(2)(d). I grant an order of possession effective December 31, 2019.

As the landlord has been successful in this application, I grant him the \$100.00 filing fee for this application.

Conclusion

I grant an order of possession to the landlord effective December 31, 2019 at 1:00 p.m. pursuant to section 55 of the *Act*.

I order that the landlord serve a copy of this decision and attached order of possession on the tenant immediately upon its receipt, in accordance with section 88 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 *Residential Tenancy Act*.

Dated: December 09, 2019

Residential Tenancy Branch