



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNR

Introduction

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

- cancellation of 10 Day Notice (the Notice), pursuant to section 46 of the *Act*.

The landlord BJ and his advocate NM called into this teleconference at the date and time set for the hearing of this matter. The applicant (tenant) did not, although I waited until 11:15 p.m. to enable him 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, advocate and I were the only persons who had called into this teleconference.

After 10 minutes into the hearing, I paused the hearing as I could not hear the parties clearly and had lost access to the system. I re-joined the hearing and the hearing proceeded.

The landlord confirmed they received the tenant's Notice of Dispute Resolution and evidentiary materials from the tenant by personal service on February 3, 2020. The landlord served his evidentiary materials to the tenant by personal service on February 7, 2020.

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 proceeded with the hearing.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution 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 the *Act*.

Issue to be Decided

1. Is the tenant entitled to an order to cancel the 10 Day Notice pursuant to section 46 of the *Act*?
2. Is the tenant entitled to the filing fee pursuant to section 72 of the *Act*?
3. Is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The tenancy started on October 15, 2019. Rent was \$1,600.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$800.00 was obtained which the landlord holds it in Trust. A copy of the tenancy agreement was submitted into evidence.

The landlord testified that the 10 Day Notice was served by posting on the tenant's door on January 31, 2020. The tenant filed an application to dispute the 10 Day Notice on February 3, 2020.

The landlord testified that the tenant had vacated the rental property on March 24, 2020 and Advocate argued that an Order of Possession was no longer required.

Analysis

Section 46 of the *Act* provided that upon receipt of a 10 Day Notice the tenant may, within 5 days, dispute the Notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the Notice. I find that the tenant disputed the Notice within the 5 days.

"The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to

End Tenancy.” In this case, the landlord must demonstrate why they feel the 10 Day Notice is valid.

Section 52 of the *Act* requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the Notice, state the grounds for ending the tenancy; and be in the approved form. I find the Notice complies with the requirements set out in section 52 of the *Act*.

Section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the “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 or the landlord’s Notice to End tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The landlord testified that the tenant had vacated the rental property on March 24, 2020 and Advocate argued that an Order of Possession is no longer required. Accordingly, in the absence of any attendance at this hearing by the applicant and the fact that the tenant has vacated the rental property. I order the application dismissed without leave to reapply.

Conclusion

I order the application dismissed 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: April 10, 2020

Residential Tenancy Branch