



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 12, 2020 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated February 18, 2020 (the "Notice").

The Tenant attended the hearing. Nobody attended the hearing for the Landlord.

The Tenant advised at the outset that he tried to cancel the hearing because he has resolved this matter with the Landlord. The Tenant advised that the Landlord has allowed him to continue living at the rental unit.

Rule 5.0.1 of the Rules of Procedure (the "Rules") states:

Where a tenant has applied to dispute a landlord's notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application...

Given rule 5.0.1 of the Rules, I told the Tenant I was not able to allow him to cancel the hearing without the Landlord's consent and without going through some preliminary matters.

The Tenant asked to call a representative of the Landlord to have them call into the hearing. I allowed the Tenant to do so. While this was occurring, either my connection or the Tenant's connection to the hearing was lost. I called back into the hearing and nobody was on the line. The Tenant then rejoined the hearing around 9:42 a.m. I understood the Tenant to say that he had left a message for the Landlord's representative. Nobody was on the line for the Landlord.

I told the Tenant we would go through some preliminary issues. I outlined the process and issues that would be addressed. The Tenant did not have questions about the process when asked. The Tenant provided affirmed testimony.

Neither party submitted evidence prior to the hearing. I addressed service of the hearing package.

The Tenant testified that the hearing package was sent to the Property Manager for the Landlord by registered mail on March 13, 2020. The Tenant testified that he sent the package to the Landlord at the address on the Notice. The Tenant provided Tracking Number 1 in relation to the package. I looked this up on the Canada Post website which shows it was delivered and signed for March 25, 2020.

Based on the undisputed testimony of the Tenant and Canada Post website information, I am satisfied the Landlord was served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the "Act"). I am also satisfied the Tenant complied with rule 3.1 of the Rules in relation to the timing of service. Based on the Canada Post website information, I am satisfied the Landlord received the hearing package March 25, 2020, in sufficient time to prepare for, and appear at, the hearing.

The Tenant confirmed there is a written tenancy agreement between the parties in relation to the rental unit. He testified that the tenancy started five or six years ago.

I did not have a copy of the Notice before me as neither party had submitted it. The Tenant testified that it is dated February 18, 2020 with an effective date of March 31, 2020. The Tenant testified that it is based on repeated late payment of rent. The Tenant testified that he received the Notice February 29, 2020.

After addressing the preliminary matters, I told the Tenant he could withdraw the dispute if he wished or proceed with the dispute. I told the Tenant that, if he withdraws the dispute, I will not make any findings about the Notice and will not cancel it. I told the Tenant he would be out of time to dispute the Notice in the future. I told the Tenant that, if he proceeds with the dispute, the Notice will be cancelled because the Landlord did not attend the hearing to prove the Notice.

The Tenant eventually decided to withdraw the dispute on the basis that he had resolved this matter with the Landlord and had agreed to cancel the hearing.

I allow the Tenant to withdraw the Application. I acknowledge rule 5.0.1 of the Rules. However, the Landlord was served with the hearing package and did not attend the hearing, which lasted 41 minutes. If the Landlord wished to seek an Order of Possession based on the Notice at the hearing, the Landlord should have attended the hearing. Further, I would not have issued the Landlord an Order of Possession based on the Notice in the absence of the Landlord at the hearing because the Landlord has the onus to prove the Notice pursuant to rule 6.6 of the Rules. When a landlord does not attend a hearing about a dispute of a notice to end tenancy, the landlord has failed to prove the Notice. In these specific circumstances, I find it appropriate to allow the Tenant to withdraw the Application on the basis that the parties have reached an agreement resolving the issue.

The Application is withdrawn at the request of the Tenant.

Conclusion

The Application is withdrawn at the request of the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 08, 2020

Residential Tenancy Branch