



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On October 4, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two Month Notice to End Tenancy. The matter was set for a participatory hearing via conference call.

Preliminary Matter

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 12-minute hearing. The Tenant was emailed a copy of the Notice of a Dispute Resolution Hearing by the Residential Tenancy Branch on October 8, 2020; however, did not attend the teleconference hearing set for today at 11:00 a.m.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a 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.

As the Tenant did not call into the conference, I dismiss the Tenant’s Application without leave to reapply as the Tenant failed to attend the hearing to present the merits of their Application or, at the very least, cancel their scheduled hearing in advance of the hearing.

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.

This hearing was conducted in the Tenant’s absence and the issuance of an Order of Possession was considered along with the affirmed testimony and evidence as presented by the Landlord.

Issues to be Decided

As the Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord Use, dated September 29, 2020, has been dismissed, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord provided the following undisputed testimony and evidence:

The six month, fixed-term tenancy began on December 1, 2019 and continued as a month-to-month tenancy. The rent is \$900.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$450.00.

The Landlord served a Two Month Notice to End Tenancy to the Tenant on September 29, 2020. Soon after the Tenant served notice to the Landlord that she was applying for Dispute Resolution to cancel the Two Month Notice, both parties signed a Mutual Agreement to End a Tenancy, dated October 8, 2020 (the "Mutual Agreement").

The Landlord submitted a copy of the Mutual Agreement and stated that the Landlord and the Tenant signed it on October 8, 2020 and that both parties mutually agreed to end the tenancy on December 31, 2020.

The Landlord acknowledged that she has cancelled the Two Month Notice to End Tenancy and has requested an Order of Possession for the rental unit, based on the Mutual Agreement to end the tenancy on December 31, 2020.

Analysis

Section 44(1)(c) states that a tenancy may end if the landlord and tenant agree in writing to end the tenancy. In this case, based on the Landlord's submissions, I find that the tenancy will be ending on December 31, 2020, as a result of the signed Mutual Agreement.

Section 55 of the Act requires me to consider if the Landlord is entitled to an Order of Possession if the Tenant's Application is dismissed and the Notice to End Tenancy is compliant with the Act. In this case, the Landlord has cancelled the Two Month Notice in favour of the Mutual Agreement.

This hearing was initiated by the Tenant's request to cancel a Two Month Notice to End Tenancy and it has been dismissed. After hearing the Landlord's evidence, I accept that the tenancy has ended on December 31, 2020, as a result of the Mutual Agreement. I find that I cannot consider the compliance of the Two Month Notice to End Tenancy as the Landlord has withdrawn that notice. As such, I find that I do not have the jurisdiction to issue an Order of Possession in this case.

The Landlord still has the right to request an Order of Possession of a rental unit, pursuant to section 55(2) of the Act.

Conclusion

The Tenant's Application for Dispute Resolution has been dismissed without leave to reapply.

The tenancy will end, based on Mutual Agreement, on December 31, 2020.

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 14, 2020

Residential Tenancy Branch