



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On November 3, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") to cancel a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") issued on October 31, 2020. The matter was set for a conference call.

The Landlord attended the conference call hearing; however, the Tenant did not. As the Tenant is the applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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.

Issues to be Decided

- Should the Notice issued on October 31, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I called into the hearing, and the line remained open while the phone system was monitored for ten minutes, and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenant did not attend the hearing by 9:45 a.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenant's application without leave to reapply.

The Landlord testified that they served the Notice to the Tenant on October 31, 2020, by posting it to the front door of the rental unit, listing an end of tenancy date of December 31, 2020. The Landlord testified that the Tenant had not moved out in accordance with the Notice and requested an order of possession.

As neither party to this dispute had submitted a copy of the Notice into documentary evidence, the Landlord was given 24hrs to submit a copy of the Notice into documentary evidence.

The Residential Tenancy branch received a copy of the Landlord's Notice to end tenancy on January 22, 2021, the same day as these proceedings.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant has been abandoned their application for Dispute Resolution. As the Respondent attended these proceeding, I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) *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.*

Section 52 of the Act states:

Form and content of notice to end tenancy

52 *In order to be effective, a notice to end a tenancy 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,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.**

I have reviewed the Notice submitted into evidence by the Landlord, and I find that the Notice to end tenancy is a typed two page document created by the Landlord and not the required approved form created by the RTB, which in this case would be the "2 Month Notice to End tenancy for Landlord's Use of Property, form #RTB-32".

As the Landlord did not use the required #RTB-32 form I must find that the Notice before me is not a valid and enforceable under the Act to end this tenancy. Accordingly, I decline to grant the Landlord's request for an Order of Possession.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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: January 22, 2021

Residential Tenancy Branch