



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction and Analysis

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 1 Month Notice to End Tenancy for Cause dated November 19, 2020 (1 Month Notice) and to recover the cost of the filing fee.

The tenant did not submit a copy of the 1 Month Notice or the tenancy agreement in evidence. The hearing package provided to each applicant contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Dispute Resolution Proceeding document dated December 8, 2020 (Notice of Hearing) provided to the tenant for service on the landlord.

The 1 Month Notice document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the tenant's claim, in particular when the tenant is asking to have the 1 Month Notice cancelled. The responsibility of proving a claim is on the person making the claim. As the tenant failed to provide a copy of the 1 Month Notice, I find the tenant has provided insufficient evidence to prove their claim. Therefore, I dismiss the tenant's application without leave to reapply.

While the tenant did provide a copy of a second 1 Month Notice dated December 20, 2020, I find this to be moot, as the first notice is the one the applicant applied to dispute and was not submitted for my consideration.

While section 55 of the Act states that I must grant an order of possession once I have dismissed the tenant's application, I do not grant an order of possession for two reasons in this matter. Firstly, where the 1 Month Notice has not been submitted in evidence by either party, I will not grant an order of possession as the 1 Month Notice could potentially fail to comply with section 52 of the Act. Section 55 of the Act requires that

before granting an order of possession, the notice to end tenancy must comply with section 52, which I am unable to determine without a copy of the 1 Month Notice. Secondly, the tenant referred to a mutual agreement between the parties that while not completed in writing, was discussed verbally between the parties according to the tenant. As a result, it could be that the parties have agreed to continue the tenancy and as a result, the landlord is at liberty to apply for an order of possession, if required.

Conclusion

The tenant's application is dismissed without leave to reapply for the reason stated above.

An order of possession is not granted to the landlord for the two reasons stated above.

This decision will be sent by regular mail to the tenant as they confirmed they do not have an email address. The landlord will be sent the decision by email at the email address provided in the tenant's application.

I do not grant the filing fee as the application was not successful.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 23, 2021

Residential Tenancy Branch