



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT (Tenant)
 OPL, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 12, 2021 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the “Notice”) and to recover the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear at the hearing. The hearing proceeded for 17 minutes; however, the Tenant did not call into the hearing during this time.

The Landlord submitted a Mutual Agreement to End a Tenancy signed by the parties ending the tenancy March 20, 2021. The Landlord advised that the Tenant has vacated the rental unit. The Landlord advised that the Tenant's family attended to assist the Tenant move out and that the Tenant's family has confirmed the Tenant has vacated the rental unit. In the circumstances, the Landlord did not seek an Order of Possession based on the Notice.

The Landlord advised that they filed an Application for Dispute Resolution in relation to the Notice which resulted in a separate file number (“File 641”) and a separate hearing date of May 31, 2021. The Landlord asked that File 641 be called ahead and withdrawn. The Landlord advised that the hearing package for File 641 has not been served on the Tenant and the Tenant is not expecting to appear at a hearing May 31, 2021. File 641 is the Landlord's application seeking an Order of Possession based on the Notice and seeking to recover the filing fee.

Rule 7.3 of the Rules of Procedure states:

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.

Here, the Tenant failed to attend the hearing and provide a basis for the Application. In the absence of a basis for the Application, the Application is dismissed without leave to re-apply.

Section 55(1) of the *Residential Tenancy Act* (the “*Act*”) requires an arbitrator to issue an Order of Possession when a tenant applies to dispute a notice to end tenancy, the application is dismissed and the notice complies with section 52 of the *Act*.

However, the Landlord is not seeking an Order of Possession for the rental unit given the parties signed a Mutual Agreement to End a Tenancy and the Tenant has vacated the rental unit. Therefore, I have not considered whether an Order of Possession should be issued pursuant to section 55 of the *Act*.

Further to the request of the Landlord, I have brought File 641 forward and I allow the Landlord to withdraw File 641 for the following reasons. File 641 deals with the same Notice at issue in the Application. The Tenant is not aware of the May hearing and therefore not expecting to appear at the May hearing. There is no prejudice to the Tenant in allowing the Landlord to withdraw File 641. The issue raised on File 641 is a moot point given the Tenant has vacated the rental unit.

Conclusion

The Application is dismissed without leave to re-apply. File 641 is withdrawn at the request of the Landlord.

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: March 22, 2021

Residential Tenancy Branch