



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking an order as follows:

1. For an order of possession based on an undisputed notice to end tenancy.

The tenant's application is seeking an order as follows:

1. To cancel a One Month Notice to End Tenancy for Cause (the "Notice") issued on September 30, 2021.

Only the landlord appeared. The tenant did not appear although the telephone conference line was open for 20 minutes.

I note the tenant's digital files shows the Residential Tenancy Branch contacted the tenant by email on January 26, 2022, to confirm if the hearing was still required at which time the tenant's confirmed the hearing was required.

I further note the tenant's digital files shows the Residential Tenancy Branch sent by email on February 15, 2022, a reminder notification of their upcoming dispute. I have confirmed that the tenant was given the correct codes and telephone information for this hearing.

The landlord stated that they were not served with the tenant's application for dispute resolution.

Tenant's application

In this case, the tenant did not attend the hearing. The landlord was not served with the tenant's application. Not attending the hearing and not serving their application on the landlord has the same effect as if an application was not made. Therefore, I find I must dismiss the tenant's application for lack of service. The tenant is not granted leave to reapply.

Landlord's application

The landlord testified that they served the tenant with their application for dispute resolution and evidence by registered mail sent on November 15, 2021. Filed in evidence is a copy of the Canada Post tracking number. The landlord indicated the tenant did not pickup the package as it was returned unclaimed.

I am satisfied that the tenant was served in accordance with the Act. I find the tenant was deemed served on November 20, 2021. Refusal or neglect to pickup the package does not override the deemed service provision of the Act.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord testified that the tenant was served with the Notice on September 30, 2021, by posting to the door. The tenant acknowledged service of the Notice in their application. Filed in evidence is a copy of the Notice.

The landlord stated that they issued the Notice because the tenant breach a material term of their tenancy agreement that was not corrected after they gave the tenant written notice on July 7, 2021, to rectify the problem by July 20, 2021. Filed in evidence is a copy of the letter.

The landlord stated that term 11 of the tenancy agreement states that no pets or visiting pets are allowed in the building. The landlord stated that the tenant did have a dog living in their premises and was to rehome it by July 20, 2021; however, the tenant kept saying it was not his dog. The landlord stated that whether or not the dog was the tenants they were in breach of their tenancy agreement, even after given written notice

of the breach. The landlord stated on July 23, 2021, the dog was again in the premises. Filed in evidence is a copy of the tenancy agreement.

Although the landlord did not receive the evidence of the tenant or their application. I informed the landlord of the dog license filed in evidence by the tenant. The landlord stated that the name on the license is the tenants ex partner and they were told that they apparently have some type of share custody of the dog.

The landlord stated that the tenant has now failed to pay rent for February 2022.

The tenant's writes in their application that they were disputing the Notice as follows,

"Landlord is claiming I have a dog that lives in my unit"

[Reproduced as written.]

I note the tenant also submitted a copy of a dog license in another person's name; however, it is dated July 23, 2021, which is after July 20, 2021 the date in the written warning.

Analysis

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

Although there was no requirement for me to consider the merits of the Notice as the tenant's application was dismissed as they did not serve the landlord with their application, and this would have the same effective as if the Notice was never disputed.

However, I did consider the merits as the tenant would not have been successful in cancelling the Notice, based on the evidence they submitted.

First, whether or not the dog was actually living in the rental is not relevant as the tenant was not allowed to have any pets or visitor pets in the premises. The tenant was given written warning on July 7, 2021, to have the animal removed no later than July 20, 2021; however, on July 23 the dog was again seen in the premises.

Simply because the tenant states the dog is not living with them and provides a dog license which is dated three days after July 20, 2021, this does not support that the dog

was never at the premises. I find it more likely than not that this was done as an attempt to mislead the evidence.

I find the Notice is valid and remains in full force and effect, I find the landlord is entitled to an order of possession pursuant to section 55 of the Act as the Notice was completed in accordance with section 52 of the Act. I find the tenancy legally ended on October 31, 2021, and the tenant is overholding the premises.

As the tenant has now failed to pay rent for February 2022, I cannot consider extending the tenancy as occupancy rent has not been paid.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application to cancel a Notice is dismissed.

The landlord is granted an order of possession.

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: February 18, 2022

Residential Tenancy Branch