



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee cost from the landlord.

The tenant provided affirmed testimony that on February 7, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service; the tenant has the receipt.

The tenant used the landlord's address that was provided on a Proof of Service document that was posted to the tenant's door on January 26, 2013.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Issue(s) to be Decided

Should a Notice ending tenancy be cancelled?

Is the tenant entitled to return of the filing fee?

Background and Evidence

The tenant said that he found a Proof of Service document that had been posted to his door on January 26, 2013. A copy of this Notice was provided as evidence. The Proof of Service document indicated that a 10 Day Notice to End Tenancy was posted to the door on January 26, 2013 at 1:35 p.m. The document was signed by S.P. and witnessed by a friend.

The tenant said he did not receive any Notice ending tenancy; only a copy of the landlord's Proof of Service document.

The tenant contacted the landlord and was told that he had in fact been issued a 1 Month Notice to End Tenancy for Cause. The landlord agreed to meet with the tenant approximately 2 weeks ago, but did not arrive for that meeting. The landlord has not given the tenant a copy of any Notice ending tenancy.

The tenant's rent was automatically paid on February 1, 2013 and he did not receive any indication from the landlord that payment was accepted for use and occupancy only.

Analysis

I find, in the absence of the landlord who was served with Notice of this hearing; that there is no evidence the tenant was given any Notice ending tenancy.

The tenant has attempted to obtain a copy of the Notice from the landlord; but when the tenant contacted the landlord to enquire about the Notice that was supposedly left on his door, the landlord failed to meet with the tenant and no attempt was made to provide the tenant with a copy of a Notice ending tenancy.

Therefore, as there is no evidence before me that the tenant was given a Notice to end tenancy I find that the tenant has not been served with a Notice to end tenancy and that the tenancy shall continue until it is ended in accordance with the Act.

Further, the tenant stated he has paid February 2013 rent; no receipt for use and occupancy was issued; therefore, even if a Notice had been given I would find that the tenancy was reinstated.

The tenant is entitled to deduct the \$50.00 filing fee from his next month's rent due.

Conclusion

The tenancy shall continue until it is ended in accordance with the Act.

The tenant is entitled to the \$50.00 filing fee.

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 27, 2013

Residential Tenancy Branch

