



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K. BARBOUR HOLDING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

The landlords did not appear for a hearing set for 0930. The hearing remained open until 0943. The landlords did not file any evidence in respect of this application. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant testified that she served the landlord with the Dispute Resolution package on 18 October 2014 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the landlords were properly served with notice of this application pursuant to sections 89 and 90 of the *Residential Tenancy Act* (the Act).

Issue(s) to be Decided

Is the 1 Month Notice valid? Is the tenant entitled to recover her filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant was served with the 1 Month Notice dated 4 October 2014. The 1 Month Notice was posted to the tenant's door. The 1 Month Notice set out that the reason for the notice was that the tenant or a person permitted on the property by the tenant had

seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Analysis

In accordance with subsection 47(4) of the Act, the tenant must file his or her application for dispute resolution within ten days of receiving the 1 Month Notice. Pursuant to section 90, a notice served by posting it to a door is deemed delivered on the third day after its posting. In this case, the tenant is deemed to have received the 1 Month on 7 October 2014, the third day after its posting. The tenant filed her application for dispute resolution on 17 October 2014. Accordingly, the tenant filed within the ten day limit provided for under the Act.

Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlords did not submit any evidence or appear for this hearing. The landlords did not meet their onus of proof. Thus, the 1 Month Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

As the tenant was successful on her application she is entitled to recover her \$50.00 filing fee from the landlords. Pursuant to section 72 of the Act, the tenant may deduct this amount from the next rent payment due to the landlords.

Conclusion

The 1 Month Notice is set aside and is of no force or effect. I allow the tenant's application to recover her \$50.00 filing fee for her application. In order to implement this monetary award, I order the tenant to deduct \$50.00 from her next monthly rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 05, 2014

Residential Tenancy Branch