



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application to cancel a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and to recover their filing fee.

The landlord did not appear for a hearing set for 1100. The hearing remained open until 1117. The landlord did not file any evidence in respect of this application. The tenant WS attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions on behalf of the tenants

At the hearing the tenant indicated that it was unlikely that the landlord was going to appear because she had found the receipt for October's rent that she had misplaced and had indicated to the tenants that she intended the tenancy to continue.

The tenant testified that he personally served the landlord with the dispute resolution package on 6 November 2014. The tenant testified that his wife, tenant RT, saw this personally delivery from the window. On the basis of this evidence, I am satisfied that the landlord was properly served with the dispute resolution package pursuant to section 89 of the *Residential Tenancy Act* (the Act).

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Are the tenants entitled to recover their 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 tenants' claim and my findings around each are set out below.

The tenants were served with the 1 Month Notice dated 31 October 2014. The tenants received the 1 Month Notice on 1 November 2014. The 1 Month Notice set out that the reason for the notice was that the tenants were repeatedly late paying rent.

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. In this case, the tenants received the 1 Month on 1 November 2014. The tenants filed their application for dispute resolution on 3 November 2014. Accordingly, the tenants 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 landlord did not submit any evidence or appear for this hearing. The landlord did not meet her 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 tenants were granted a fee waiver for this application, they are not entitled to recover any filing fee from the landlord.

Conclusion

The 1 Month Notice is set aside and is of no force or effect. The tenancy continues uninterrupted.

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 27, 2014

Residential Tenancy Branch

