



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 tenant's application to cancel a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and to recover his filing fee.

The landlord did not appear for a hearing set for 1100. The hearing remained open until 1115. The landlord 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 affirmed testimony, and to make submissions. The tenant called one witness who is also the tenant's spouse.

The tenant testified that he served the landlord with the dispute resolution package on or about 8 May 2015 by registered mail. The tenant provided me with a Canada Post tracking number that set out the same. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the *Residential Tenancy Act* (the Act).

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Is the tenant entitled to recover his 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 on 30 April 2015. The landlord personally delivered the 1 Month Notice to the witness who is the tenant's spouse. The witness testified that she believes that the notice was dated 29 April 2015. The 1 Month Notice set out an effective date of 1 June 2015. The 1 Month Notice set out that the reason for the notice was that the tenant had allowed an unreasonable number of occupants in the rental unit.

The tenant testified that this allegation relates to his mother convalescing at the rental unit.

The tenant filed this application 6 May 2015.

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 tenant received the 1 Month Notice on 30 April 2015. The tenant filed his application for dispute resolution on 6 May 2015. 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 landlord did not submit any evidence or appear for this hearing. The landlord did not meet his 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 in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application from the landlord. The tenant is entitled to a monetary order for this amount.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

Accordingly, the tenant may recover the \$50.00 monetary order by deducting that amount from rent or seek recovery of that order directly from the landlord. If the tenant elects to deduct his monetary order from rent, payment of the net amount of rent will satisfy the tenant's obligations pursuant to section 26 of the Act.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$50.00. The tenant is provided with this monetary order and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: June 19, 2015

Residential Tenancy Branch

