



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a notice to end tenancy and to recover the filing fee.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Landlord for the 12 minute duration of the hearing and no submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of documents for this hearing.

The Tenant testified that she served the Landlord with a copy of the Application and the Notice of Hearing documents by registered mail on June 18, 2015. The Tenant testified that she sent this to the Landlord’s address where she resides, which is the lower portion of the same property. The Tenant provided a copy of the Canada Post tracking receipt as evidence to verify this method of service. The Tenant testified that she had also had verbal and email conversations with the Landlord about the hearing during which she provided the Landlord with the date, time and call in codes for this hearing.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find that the Landlord was deemed served with the required documents on June 23, 2015 pursuant to the Act.

The Tenant provided a copy of the 2 Month Notice to End Tenancy for Landlord’s Use of the Property (the “Notice”) into evidence. The Tenant testified that she had been personally served with this Notice dated May 31, 2015 on the same date. The Tenant had made the Application to dispute the Notice on June 12, 2015.

Therefore, I find that the Tenant disputed the Notice within the 15 day time limit of Section 49(8) of the Act. In her Application, the Tenant pointed my attention to the second page of the Notice which did not indicate the reason for ending the tenancy.

Analysis and Conclusion

Section 52 of the Act explains the requirements on the content of a notice to end tenancy. In particular, Section 52(d) requires that for the Notice to be effective it must state the grounds for ending the tenancy.

Therefore, as the Notice served to the Tenant on May 31, 2015 did not specify a reason for ending the tenancy as required by the Act, the Notice is invalid and is of no use or effect. Furthermore, the Landlord failed to appear for the hearing and provided no documentary evidence in advance of the hearing to prove the reasons why the tenancy should end. The Tenant disputes the Notice and therefore, I cancel it pursuant to the request on the Application.

As the Tenant has been successful in cancelling the Notice, pursuant to Section 72(2) (a) of the Act the Tenant may recover the \$50.00 filing fee paid by deducting it from a future installment of rent. The Tenant should attach a copy of this decision to her rent payment when making this deduction.

Conclusion

The Landlord failed to appear for the hearing and did not serve the Tenant with a valid Notice. Therefore, the Notice dated May 31, 2015 is cancelled. The tenancy will continue until it is ended in accordance with the Act. The Tenant may recover her filing fee from rent.

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: August 17, 2015

