



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave uncontested affirmed testimony. The landlord did not attend. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on August 5, 2015. The tenant consented to a search of the Canada Post Online website which shows that Canada Post received the notice of hearing package on August 5, 2015 and that it was received by the landlord on August 6, 2015. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 of the Act.

At the end of the hearing the tenant provided a new mailing address as both tenants have vacated the rental unit on August 31, 2015. The tenants' mailing address shall be updated to forward a copy of this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to a monetary order for recovery of their filing fee?

Background and Evidence

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

The tenant stated that on July 17, 2015 the landlord issued a 2 Month Notice to End Tenancy (the 2 Month Notice) issued for Landlord's use dated July 17, 2015. The 2 Month Notice set out an effective end of tenancy date of September 30, 2015.

On July 31, 2015, the landlord issued the 1 Month Notice to the tenant. This notice was the second of three notices. The 1 Month Notice was dated July 31, 2015 and set out an effective date of August 31, 2015. The landlord selected 2 reasons for cause on the 1 Month Notice shown as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Residential Tenancy Act Only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

On August 3, 2015, the landlord issued 10 Day Notice to the tenant. This notice was the last of three notices. The 10 Day Notice was dated August 3, 2015 and set out an effective date of August 13, 2015. The 10 Day Notice set out that the tenant failed to pay \$1,250.00 in rent that was due on August 1, 2015.

The tenant has applied to cancel both the 1 Month Notice dated July 31, 2015 and the 10 Day Notice dated August 3, 2015.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

On the basis of the landlord's lack of evidence I find, on a balance of probabilities that the landlord has failed to prove that the tenant has breached a material term of the tenancy and has not paid either the security or pet damage deposits. This portion of the tenant's application is granted.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

On the basis of the landlord's lack of evidence I find, on a balance of probabilities that the landlord has failed to prove that the tenant failed to pay rent. This portion of the tenant's application is granted.

As the tenants were successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The tenant's application to cancel a 1 Month Notice dated July 31, 2015 is granted.
The tenant's application to cancel a 10 Day Notice dated August 3, 2015 is granted.

I issue a monetary order in the tenant's favour in the amount of \$50.00

The tenant is provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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: October 09, 2015

Residential Tenancy Branch

