



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EL RANCHO APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated October 7, 2015, and to recover the cost of the filing fee.

The tenants attended the teleconference hearing. The tenants were affirmed and an opportunity to ask questions about the hearing process was provided.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord via personal service on landlord agent, R.P. at the agent's suite, #102, in the afternoon of October 15, 2015. The tenants affirmed that R.P. accepted the package of documents from them. Based on the undisputed testimony of the tenants, and without any evidence before me to prove to the contrary, I accept that the landlord was sufficiently served in accordance with the *Act*. In addition to the above, the landlord submitted documentary evidence in response to the tenants' application which supports that the landlord was aware of the hearing. The landlord; however, did not attend the hearing to present their documentary evidence as required by section 7.18 of the Rules of Procedure when a tenant has disputed a notice to end tenancy.

Issues to be Decided

- Should the 1 Month Notice dated October 7, 2015 be cancelled?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenants confirmed receiving a 1 Month Notice dated October 7, 2015 on October 7, 2015 with an effective vacancy date of November 30, 2015. The tenants disputed the 1 Month Notice on October 15, 2015 which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed two causes on the 1 Month Notice. The tenants vehemently disputed the causes alleged by the landlord on the 1 Month Notice. The landlord did not attend the hearing to present evidence to prove that the 1 Month Notice was valid and should be upheld.

Analysis

Based on the tenants' documentary evidence and the undisputed testimony of the tenants, and on the balance of probabilities, I find the following.

When tenants dispute a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

As the landlord did not attend the hearing to present evidence to support the 1 Month Notice, I find the landlord has failed to prove that the 1 Month Notice is valid. Furthermore, submitting documentary evidence and not attending the hearing to present that documentary evidence, results in that documentary evidence not being considered in accordance with Rule 7.18 of the Rules of Procedure which requires the landlord to present their evidence first when a tenant applies to dispute a notice to end tenancy. In the matter before me, the landlord did not attend to present the evidence so the landlord has not met the burden of proof.

As a result of the above, **I cancel** the 1 Month Notice dated October 7, 2015.

I ORDER that the tenancy continue until ended in accordance with the *Act*.

As the tenants' application had merit, I find that the tenants are entitled to monetary compensation pursuant to section 67 of the *Act*, in the amount of **\$50** to recover the cost of the filing fee. **I authorize** a one-time rent reduction in the amount of \$50 from a future month's rent in full satisfaction of the tenants' recovery of the cost of the filing fee.

Conclusion

The tenants' application is successful.

The 1 Month Notice dated October 7, 2015 is cancelled, due to insufficient evidence.

The tenancy has been ordered to continue until ended in accordance with the *Act*.

The tenants have been authorized a one-time rent reduction in the amount of \$50 from a future month's rent in full satisfaction of the tenants' recovery of the cost of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 15, 2015

Residential Tenancy Branch

