



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC FF O

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated November 10, 2015, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to recover the cost of the filing fee, and "other" although there are no details provided in the application regarding a matter other than what is being claimed for above.

The tenant attended the teleconference hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant testified that she personally served the Notice of Hearing package, Application and documentary evidence on the landlord on November 20, 2015 and that the landlord accepted the documents from her. The tenant also testified that she verbally reminded the landlord prior to the hearing of the teleconference hearing. As a result, I am satisfied that the landlord was served with the Notice of Hearing, Application and documentary evidence on November 20, 2015.

Preliminary and Procedural Matter

At the outset of the hearing, the tenant was advised that the portion of her application relating to the request for an order to have the landlord comply with the *Act*, regulation or tenancy agreement was being refused due to insufficient details pursuant to section 59(5)(c) of the *Act*. At the very least, the tenant should have specified which section of the *Act*, regulation or tenancy agreement that the tenant was seeking the landlord to comply with, as is required by section 59(2)(b) of the *Act*. Should the tenant wish to re-apply for such an order, the tenant is at liberty to re-apply but is reminded to provide sufficient details in her application in the future when seeking an order for the landlord to comply with the *Act*, regulation or tenancy agreement.

Issues to be Decided

- Should the 1 Month Notice dated November 10, 2015 be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the 1 Month Notice dated November 10, 2015 was submitted in evidence. The tenant disputed the 1 Month Notice on November 14, 2015. The 1 Month Notice listed one cause which is:

- Tenant has allowed an unreasonable number of occupants in the unit/site.

The effective vacancy date of the 1 Month Notice is December 10, 2015. The tenant vehemently disputes the cause alleged by the landlord on the 1 Month Notice.

The landlord did not attend the hearing to provide evidence to prove that the 1 Month Notice was valid and should be upheld.

Analysis

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

When a tenant disputes a Notice to End Tenancy (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. As a result, **I cancel** the 1 Month Notice dated November 10, 2015.

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

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the *Act*, in the amount of **\$50.00** to recover the cost of \$50.00 filing fee.

I AUTHORIZE a one-time rent reduction in the amount of **\$50.00** from a future month's rent in full satisfaction of the tenant's recovery of the cost of the filing fee.

Conclusion

The tenant's application is successful.

The 1 Month Notice to End Tenancy for Cause dated November 10, 2015 is cancelled, due to insufficient evidence. The tenancy has been ordered to continue until ended in accordance with the *Act*.

The tenant is authorized to deduct \$50.00 from a future month's rent on a one-time basis in full satisfaction of the tenant's 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 18, 2015

Residential Tenancy Branch

