



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE PALISADE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on October 29, 2015 to cancel a notice to end tenancy for cause, to recover the filing fee, and for “Other” issues of which none were disclosed during the hearing.

Preliminary Issues

One of the Tenants appeared for the hearing and provided affirmed testimony as well as a copy of the 1 Month Notice to End Tenancy for Cause (the “Notice”). There was no appearance by the Landlord for the six 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 by the Tenants.

The Tenant testified that he had personally served a copy of the Application and the Notice of Hearing documents to an agent of the company Landlord. In the absence of any evidence to dispute this, I find the Tenants served the Landlord with the required documents pursuant to Section 89(1) (b) of the *Residential Tenancy Act* (the “Act”).

The Tenant testified that he received the Notice on October 21, 2015 with a vacancy date of November 30, 2015. However, since this time they had resolved the dispute with the Landlord. However, the Tenant had appeared for the hearing to formally have the Notice cancelled and to recover the filing fee from the Landlord.

The Tenant also testified that the Landlord had accepted rent for the following months after he had received the Notice and he had been issued receipts for these payments. The receipts did not indicate that the money was being accepted for use and occupancy only.

Analysis

Firstly, I find that the Notice served to the Tenants was in the approved form with the correct contents as required by Section 52 of the Act. I find the Tenants made their Application to dispute the Notice within the 10 day time limit imposed by Section 47(4) of the Act.

When a landlord issues a tenant with a Notice, the landlord bears the burden for proving the Notice. As the Landlord failed to appear for the hearing and provided no evidence in advance of the hearing to prove the reasons why the tenancy should end, I find the Landlord has failed to meet the burden to prove the Notice.

Furthermore, I accept the Tenant's submission the Landlord and Tenant have resolved the dispute. In addition, the testimony of the Tenant that the Landlord has accepted rent for several months following the service of the Notice is evidence that the tenancy has been re-instated. Therefore, I must cancel the Notice dated October 21, 2015.

As the Tenant appeared for the hearing and was successful in cancelling the Notice, I find the Tenants are entitled to recover their filing fee from the Landlord. Therefore, pursuant to Section 72(2) (a) of the Act, I allow the Tenants to deduct \$50.00 from their next installment of rent. The Tenants may want to attach a copy of this decision with their next installment of rent to put the Landlord on notice of the reduced amount.

Conclusion

The Landlord failed to appear for the hearing and prove the Notice which is hereby cancelled. The tenancy will resume until it is ended in accordance with the Act. The Tenants may recover their filing fee from their next installment of 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: January 06, 2016

Residential Tenancy Branch

