



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 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

This hearing was originally set to be heard 6 November 2015. Both parties attended that hearing. The hearing was adjourned as the parties had both filed late evidence. At that hearing, the date for the reconvened hearing was set and I provided the access codes for this teleconference. Further, both parties were sent notices of reconvened hearing by the Residential Tenancy Branch.

The landlord did not appear for the reconvened hearing set for 0930. The hearing remained open until 0943. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? Is the tenant entitled to recover his filing fee?

Background and Evidence

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

This tenancy began 1 May 2015. The parties entered into a written tenancy agreement on 4 April 2015. The landlord is set out as the “landlord” for the purpose of the tenancy agreement. Monthly rent of \$650.00 is due on the first.

The tenant received the 1 Month Notice dated 21 August 2015. The 1 Month Notice set out an effective date of 1 October 2015. The 1 Month Notice listed the landlord as the “landlord”. At the time the 1 Month Notice was issued the landlord was the caretaker of the residential property.

I received a letter dated 16 December 2015 from KN. KN is the owner of the residential property. KN sets out that she is withdrawing the 1 Month Notice and sets out that the landlord was not acting with her authority.

Analysis

Section 1 of the Act defines “landlord”:

“landlord”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;...

This definition of “landlord” is highly inclusive and includes a person who permits occupation of rental unit under a tenancy agreement. At the time the 1 Month Notice was issued the landlord was the name set out as the “landlord” on the tenancy agreement. I find, for the purpose of this tenancy, the landlord was a “landlord” pursuant to the Act until such time as the owner KN provided notice that the landlord was no longer acting for KN.

KN as owner of the rental unit is also a landlord. She has authority to withdraw the 1 Month Notice. On the basis of the letter from KN, the 1 Month Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

As a result of the deeming provision in subsection 47(5) and the apparent authority of the landlord, the tenant had no choice but to apply to cancel the 1 Month Notice in order to maintain his tenancy. At the time the 1 Month Notice was issued the landlord was in the employ of the owner. The tenant has been successful in this application. On this

basis, I order that the tenant is entitled to recover his filing fee for this application in the amount of \$50.00 from the landlord.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

I order that the tenant is entitled to reduce his rent for one month by \$50.00. Payment of the net amount of rent (\$600.00) will satisfy the tenant's obligations pursuant to section 26 of the Act.

Conclusion

The 1 Month Notice is set aside and is of no force or effect. The tenancy continues uninterrupted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 11, 2016

Residential Tenancy Branch

