



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Azzurri Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AAT, LAT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests, and for an order authorizing the tenant to change the locks to the rental unit.

The tenant attended the hearing, provided evidentiary material in advance of the hearing and gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlords attended the call. The tenant testified that the landlords were served with the Tenant's Application for Dispute Resolution and notice of this hearing on September 6, 2016 by personally handing both packages to the named landlord, for the named landlord and for the landlord company. I accept that testimony, and I find that both landlords have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the tenant testified that the applications for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests, and for an order authorizing the tenant to change the locks to the rental unit have been settled and the tenant withdraws those portions of the application.

Issue(s) to be Decided

The issue remaining to be decided is:

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The tenant testified that this month-to-month tenancy began in August, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$625.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$312.50 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 12 units.

The tenant further testified that the landlords' agent personally served the tenant with a 1 Month Notice to End Tenancy for Cause, but does not recall the date. A copy has been provided and it is dated August 29, 2016 and contains an effective date of vacancy of September 30, 2016. The tenant testified that the landlord did not have cause to issue it to the tenant.

The tenant has also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 4, 2016 which contains an effective date of vacancy of September 14, 2016 for \$625.00 unpaid rent that was due on September 1, 2016. It also says, "\$200.00 received." The tenant testified that he paid the rent on September 6, 2016 which is also when the tenant served the landlord with the hearing package for this hearing.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. The tenant has an obligation under the Residential Tenancy Branch Rules of Procedure to provide a copy of the notice for the hearing. The tenant has done so, and I have reviewed the 1 Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. However, the tenant testified that the landlord did not have cause to issue it. The *Act* specifies in what instances the landlords may issue such a notice, and in the absence of any evidence from the landlords, I am not satisfied that the landlords have established that the landlords had cause to issue it. Therefore, I cancel it and the tenancy continues.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has not made an application to cancel it, however the *Residential Tenancy Act* states that if the tenant pays the rent in full within 5 days of receiving such a notice, the notice is of no effect.

Conclusion

For the reasons set out above, the tenant's applications for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests, and for an order authorizing the tenant to change the locks to the rental unit are hereby dismissed as withdrawn.

The 1 Month Notice to End Tenancy for Cause dated August 29, 2016 is hereby cancelled and the tenancy continues.

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 26, 2016

Residential Tenancy Branch