



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing, I confirmed with the landlord that he had received the tenant's hearing package and supporting documents. The landlord confirmed that he did not provide any written submissions or evidence for this proceeding.

Shortly after the hearing commenced, the landlord stated that he was prepared with withdraw the 1 Month Notice and continue the tenancy at this time. The tenant consented to the withdrawal of the 1 Month Notice and continuation of the tenancy. I considered this dispute to be resolved by mutual agreement and the 1 Month Notice is no longer of any force or effect.

The tenant requested that I award the tenants recovery of the filing fee from the landlord. The landlord indicated that he was not agreeable to that request and requested that I make a decision as to which party should cover the cost of the filing fee.

Issue(s) to be Decided

Which party should absorb the cost of the filing fee paid for this Application?

Background and Evidence

The tenancy started August 1, 2016 and on August 9, 2016 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) to the tenants and sent it to the tenants by registered mail. The tenants submitted on their Application that they received the Notice on August 13, 2016 and they filed to dispute it within the time limit for doing so. The tenant's application was accompanied by the requisite filing fee of \$100.00.

The 1 Month Notice issued by the landlord indicates the reason for ending the tenancy is because of: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The tenant was of the position that they were not in breach of their tenancy agreement when the tenant's son came to stay with the tenants at the rental unit. The landlord was of the position that the tenancy agreement restricts the tenants from having occupants other than those listed on the tenancy agreement and that the tenants were in breach of the tenancy agreement.

Although the parties' dispute revolves around a term or terms in the tenancy agreement, I noted that neither party had provided me with a copy of the tenancy agreement.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove that the tenancy should end for the reason(s) indicated on the Notice.

Where a landlord seeks to end a tenancy for breach of a material term of the tenancy agreement, I find it reasonable to expect that at least one of the parties would provide the Arbitrator with a copy of the tenancy agreement. As the landlord bears the burden to prove that there was a basis for issuing a Notice to End Tenancy, I find it reasonable to expect that the landlord would provide a copy of the written tenancy agreement in support of issuance of the Notice to End Tenancy since the tenant did not. Accordingly, had this dispute not been resolved by withdrawal of the Notice, I find it reasonably likely that the landlord would have been unsuccessful in establishing that the 1 Month Notice should be upheld and the Notice would most likely have been cancelled due to lack of evidence on part of the landlord. Therefore, I award the tenants recovery of the \$100.00 filing fee from the landlord.

The tenants are provided a Monetary Order in the amount of \$100.00 to serve and enforce upon the landlord as necessary. I authorize the tenants to deduct \$100.00 from a subsequent month's rent in satisfaction of the Monetary Order.

To be clear, I have made no finding as to whether the tenancy agreement restricts the tenants from having additional occupants. Rather, I suggest the parties review their tenancy agreement closely and seek independent advice should they remain uncertain as to what it provides.

Conclusion

The 1 Month Notice was withdrawn by mutual consent.

The tenants have been awarded recovery of the filing fee. The tenants are provided a Monetary Order in the sum of \$100.00 and the tenants have been authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of the Monetary Order.

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 13, 2016

Residential Tenancy Branch

