



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 28, 2016 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 10 minutes. The two tenants, male and female, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The female tenant testified that she personally served the landlord's agent, who issued the 1 Month Notice, with the tenants' application for dispute resolution hearing package ("Application") on September 2, 2016. In accordance with section 89 of the *Act*, I find that the landlord was served with the tenants' application on September 2, 2016.

The tenants testified that they received the landlord's 1 Month Notice on August 28, 2016. The notice indicates an effective move-out date of October 31, 2016. The reason indicated on the notice is that the "tenant has allowed an unreasonable number of occupants in the unit/site." In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on August 28, 2016.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for their Application?

Analysis

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the

1 Month Notice on August 28, 2016 and filed their Application on September 1, 2016. Accordingly, the tenants filed within the ten day limit under the *Act*.

Where tenants apply to dispute a 1 Month Notice on time, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not appear at this hearing to provide any submissions. The landlord did not meet his onus of proof.

Therefore, the landlord's 1 Month Notice, dated August 28, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in this Application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I allow the tenants' application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated August 28, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to deduct \$100.00 from their future rent payable to the landlord at the rental unit, in full satisfaction of the filing fee monetary award made at this hearing.

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 31, 2016

Residential Tenancy Branch