



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated October 11, 2016.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenants by leaving it in the mail slot on October 11, 2016. The tenant acknowledged she had received an e-mail from the landlord advising her of the Notice to End Tenancy on that date. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was served on the landlord by mailing, by registered mail to where the landlord resides on October 27, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 27, 2010. The tenancy agreement provided that the tenant(s) would pay rent of \$930 per month payable in advance on the 15th day of each month. The tenant(s) paid a security deposit of \$450 prior to the start of the tenancy. The tenants vacated the rental unit on November 11, 2016.

Grounds for Termination:

Neither party provided a copy of the Notice to End Tenancy. However, the parties stated that it identified the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Analysis:

I ordered that the application of the Tenants to cancel the one month Notice to End Tenancy be dismissed without leave to re-apply as the Tenants vacated the rental unit and they have not desire to reinstate the tenancy.

I dismissed the tenant's application to recover the cost of the filing fee. The filing fee is usually awarded where a party is successful with their application. The tenants did not proceed with their application as they had vacated the rental unit. As a result they are not entitled to reimbursement of the filing fee.

Further, while it is not appropriate to consider the application to cancel the Notice on its merits given the tenants have vacated, I determined the landlord acted reasonably in serving the one month Notice given the dispute between the upstairs and downstairs tenants.

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: December 12, 2016

Residential Tenancy Branch