



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNL FF

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

- allow the tenant more time to make an application to cancel a notice to end tenancy pursuant to section 66;
- cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 47; and
- recover the filing fees of this application from the landlord.

The landlord did not attend this hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant submitted documentary evidence that the landlord's 2 Month Notice, dated October 27, 2016 was posted on the rental unit door on November 3, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the 2 Month Notice was served on the tenant on November 6, 2016, three days after posting.

The tenant testified that she left a copy of the tenant's application for dispute resolution hearing package with the landlord's spouse who confirmed she is an agent of the landlord on November 21, 2016 at the landlord's address for service. Based on the undisputed testimony of the tenant and in accordance with section 89(1)(b) of the *Act*, I find that the landlord was served with the tenant's application on November 21, 2016.

Issue(s) to be Decided

Should the tenant be allowed an extension of time to file her application?

If so, should the 2 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided evidence regarding the following facts. This month to month tenancy began in March of 2015. The current monthly rent is \$825.00, payable on the first of the month. The tenant acknowledged receipt of the 2 Month Notice. The tenant testified that she filed an application for dispute resolution on November 18, 2016 and personally served it on the landlord's agent, his wife, on November 21, 2016.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

While the tenant has applied for an extension of time to make an application pursuant to section 66 of the *Act* I find that the tenant has filed her application on November 18, 2016 within the prescribed time limit and an order is unnecessary. I decline to issue an order for an extension of the time limit to file an application for dispute resolution.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 2 Month Notice. Because the landlord did not attend the hearing, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 2 Month Notice.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with section 72 of the *Act*, the tenant may deduct \$100.00 from the next rental payment to the landlord.

Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenant's favour in the amount of \$100.00, which may be implemented by the tenant's one-time reduction of a future monthly rental payment to the landlord of \$100.00.

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 28, 2016

Residential Tenancy Branch