



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, SS

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on December 23, 2016, to have the landlord comply with the Act, to suspend or set conditions on the landlord’s right to enter.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 30, 2016.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

The tenant appeared gave testimony and were provided the opportunity to present their evidence orally and in written, documentary form, and make submissions at the hearing.

Issues to be Decided

Should the Notice issued on December 23, 2016, be cancelled?

Should the landlord be ordered to comply with the Act?

Should the landlord right to enter the unit be suspended or set condition on those rights?

Background and Evidence

The Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on January 31, 2017

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

This matter was set for hearing by telephone conference call at 9:30 A.M. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the tenant.

Since the landlord did not attend the hearing by 9:40 A.M. to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reasons stated. I find that the landlord has failed to show cause to end the tenancy.

Therefore, I grant the tenant's application to cancel the Notice issued on December 23, 2016, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

As the tenant was successful with their application, the tenant is entitled to recover the filing fee from the landlord. Therefore, I authorize the tenant to deduct the amount of \$100.00 from February 2017, rent payable to the landlord to satisfy this award.

Although the tenant listed other issues in their application; the tenant provided no testimony. Therefore, the balance of the tenant's application is dismissed with leave to reapply.

Conclusion

The tenant's application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act. The tenant is authorized a onetime rent

reduction of \$100.00 from February 2017 rent payable to the landlord to recover the cost of the filing fee from the landlord.

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: January 24, 2017

Residential Tenancy Branch