



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, O

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), for more time to cancel the 1 Month Notice, and for “Other” non-disclosed issues.

The Tenant, the Tenant’s advocate, and an agent for the company Landlord appeared for the hearing. The Tenant’s daughter also provided witness testimony.

The Tenant testified that she served a copy of the Application and the Notice of Hearing documents by personally handing them to an agent of the company Landlord on January 27, 2017. The Landlord’s agent stated that she does not know how the documents were received by the company Landlord but acknowledged that she had the required paperwork before her. Therefore, I determined that the Tenant had affected service on the Landlord pursuant to Section 89(1) (b) of the *Residential Tenancy Act* (the “Act”).

The Tenant’s advocate stated that they had received documentary evidence from the Landlord a day prior to this hearing and they did not have time to prepare and respond to it since the Tenant has a disability and this was the reason why she was appearing at this hearing with an advocate to assist her. The Tenant’s advocate stated that with respect to the Landlord’s evidence, the Tenant wanted to get some legal advice.

The Landlord’s agent confirmed that she had provided documentary evidence a day prior to this hearing. However, that evidence was not before me at the time of this hearing due to the lateness in which it was served. The Landlord explained that she had been sick and that the evidence was essential in proving her case.

Based on the foregoing, I declined to consider or allow the late evidence submitted by the Landlord as this had not been provided by the Landlord within the time limits set by

the Dispute Resolution Rules of Procedure. I was not satisfied by the Landlord's oral evidence that her sickness prevented her from submitting evidence on time and I find that to allow such evidence would have been prejudicial to the Tenant.

However, the parties discussed the issues with respect to the reasons the 1 Month Notice dated January 13, 2017 was served to the Tenant. As a result, the parties both agreed to withdraw the 1 Month Notice. Accordingly, the tenancy will continue until such time the tenancy is ended pursuant to the Act.

The parties were advised that the Landlord is at liberty to issue the Tenant with another 1 Month Notice at any time post this hearing. However, I suggested to the parties that the Tenant be given time to show that she is in compliance with the alleged reasons the Landlord had indicated on the 1 Month Notice to end the tenancy. The Landlord was also cautioned regarding the burden to prove another 1 Month Notice she may serve to the Tenant in the future. However, the Landlord is not barred from relying on the late evidence she submitted for this hearing which was not considered.

If the Tenant is served with another 1 Month Notice and it is disputed by the Tenant, the Landlord must ensure that any evidence she intends to rely on is served again to the Residential Tenancy Branch and to the Tenant pursuant to the time limits for that hearing.

Conclusion

The parties agreed to withdraw the 1 Month Notice dated January 13, 2017. Therefore, there was no requirement for me to make any legal findings in this matter. The Tenant withdrew the Application and the tenancy will continue until it is ended in accordance with the Act. This file is now closed. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 21, 2017

Residential Tenancy Branch

