



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing was convened by way of conference call in response to the Tenants' Application for Dispute Resolution (the "Application") filed on January 27, 2017 for the following requests: to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"); to recover the filing fee from the Landlord; and for "Other" issues, namely to cancel a 10 Day Notice to End Tenancy for Unpaid Utilities (the "10 Day Notice") because the amount owed had been paid.

The Tenants appeared for the hearing but only the female Tenant provided affirmed testimony. However, there was no appearance for the Landlord during the 17 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents for this hearing by the Tenants.

The Tenant testified that she served a copy of the Application and the Hearing Package to the Landlord by registered mail on February 1, 2017. The Tenants provided the Canada Post tracking number into evidence to verify this method of service. The Tenant testified that the Canada Post website shows the documents were received and signed for on February 4, 2017. Based on the undisputed evidence before me, I find the Tenants served the Landlord with the required documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Have the Tenants established that the notices to end tenancy should be cancelled?

Background and Evidence

The Tenant testified that this tenancy began in November 2015 for a fixed term of one year which then continued on a month to month basis thereafter. Rent is payable by the Tenants in the amount of \$1,700.00 on the first day of each month and the Tenants are

responsible for paying utilities after the Landlord provides them with a copy of the bill. The Tenants paid the Landlord a security deposit of \$850.00 two weeks prior to the tenancy starting which the Landlord currently holds in trust.

The Tenant testified that on January 26, 2017 the Landlord posted on their door the 10 Day Notice and the 1 Month Notice, both of which were dated January 26, 2017 and provided into evidence by the Tenants. The Tenant acknowledged receipt of these notices on January 27, 2017 which was the same day they filed the Application to have them cancelled.

The 10 Day Notice detailed an amount of \$367.00 for unpaid utilities. The Tenant testified that at the time they were served with the 10 Day Notice, the Landlord had not provided them with a copy of the utility bill or a demand letter. The Tenant testified that she did however make the utility payment of \$367.00 on January 27, 2017 and therefore the 10 Day Notice is no longer valid.

The Tenant testified that the Landlord has provided no evidence of the reasons indicated on page 2 of the 1 Month Notice which they vehemently dispute.

Analysis

I have examined the 10 Day Notice and 1 Month Notice provided by the Tenants and I find the method in which it was served to the Tenants and the contents within complied with the requirement of Section 52 of the Act.

I accept the Tenants received the notices on January 27, 2017 after they were posted to the rental unit door by the Landlord. I also find the Tenants applied to dispute the notices within the correct time limits provided by Section 46(4) (b) and Section 47(4) of the Act.

Pursuant to Section 46(6) (b) of the Act, a landlord must provide a tenant with a 30 day written demand letter when making a request for unpaid utilities **before** a 10 Day Notice can be served to the Tenant. In addition, Section 46(4) (a) of the Act states that a 10 Day Notice has no effect if the amount payable on the 10 Day Notice is paid within five days of receiving it.

Based on the Tenant's undisputed oral evidence, I accept the Landlord did not provide the Tenants with a 30 day written demand letter and therefore the 10 Day Notice was served to the Tenants prematurely. In any case, I am satisfied the Tenants have paid the outstanding utilities within the correct time frame after receiving the 10 Day Notice.

Therefore, the 10 Day Notice dated January 26, 2017 is of no effect and is hereby cancelled.

With respect to the 1 Month Notice, the Landlord failed to appear for the hearing and provide and present evidence in relation to the reasons why the Landlord seeks to end the tenancy. A landlord bears the burden of proof when a tenant disputes a 1 Month Notice. Therefore, I find the Landlord failed to meet the burden to prove the 1 Month Notice which is also hereby cancelled. The tenancy will resume until it is ended in accordance with the Act.

As the Tenants have been successful in cancelling the notices to end tenancy, I find they are entitled to the \$100.00 filing fee pursuant to Section 72(1) of the Act for having to make this Application.

The Tenants are authorized to obtain this relief by deducting \$100.00 from a future installment of rent pursuant to Section 72(2) (a) of the Act. The Tenants may want to provide the Landlord with a copy of this Decision in order to put the Landlord on notice of the reason for the reduced rent payment.

Conclusion

The Landlord failed to appear for the hearing to prove the notices to end tenancy. Therefore, the 1 Month Notice and 10 Day Notice dated January 26, 2017 are cancelled. The Tenants may deduct the filing fee from rent due to 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 Act.

Dated: March 01, 2017

Residential Tenancy Branch

