



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession for cause pursuant to section 55.

The tenants applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant WF (the "tenant") primarily spoke for both co-tenants. The landlord presented her own evidence assisted by counsel (the "landlord").

Initially, I was scheduled to hear only the tenants' application today. The landlord's application was originally scheduled to be heard by another arbitrator on May 1, 2017. I found that both applications pertained to the same residential property, involved the same parties, sought similar remedies, and similar evidentiary matters would be considered for each application. Therefore, pursuant to 2.10 of the Rules of Procedure, I ordered that the matters be brought together and heard at once.

As both parties were in attendance, I attempted to confirm that there were no issues with service of the landlord's 1 Month Notice, the parties' respective applications for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one other's materials. The tenant testified that the landlord's application for dispute

resolution dated March 23, 2017 was not served on them within three days, however they confirmed it was received. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 1 Month Notice, the respective applications and their respective evidentiary materials.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy began in October, 2014. The current monthly rent is \$975.00 payable on the first of each month. A security deposit of \$482.50 was provided at the start of the tenancy and is still held by the landlord. The rental unit is one unit in a duplex and the landlord resides in the other unit.

The landlord testified that she served a 1Month Notice on the tenants on March 3, 2017 personally. The landlord said that the tenants made calls and retained the services of an electrician without her knowledge or authorization. The landlord made several references to the fact that she is elderly and feels that the tenants are taking advantage of her.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice.

I find that the 1 Month Notice issued by the landlord does not meet the form and content requirements of section 52. The landlord testified that the 1 Month Notice was issued on March 3, 2017 but it is dated March 31, 2017. If the 1 Month Notice was issued on March 3, 2017 as the landlord said, the effective date must be no earlier than one month after the date of the notice pursuant to section 47(2). Therefore, the effective date provided on the 1 Month Notice of March 31, 2017 is invalid. Most importantly, the notice fails to provide the grounds for ending the tenancy. The landlord has failed to check off the reason for issuing the notice. She has provided, in the space provided for

details of the cause, a hand-written general complaint about one of the co-tenants. I find that this is insufficient to meet the requirement to state the grounds for ending the tenancy. Consequently, I find that the 1 Month Notice is of no force or effect.

As the tenants' application was successful the tenants are entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's application is dismissed.

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenants' application was successful, the tenants are entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenants to recover his \$100.00 filing fee by reducing the monthly rent by that amount on the next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenants' favour in the amount of \$100.00. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: April 6, 2017

Residential Tenancy Branch