



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

This hearing dealt with an application by the tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”) issued on March 7, 2017.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the notice of hearing was considered. The tenant gave affirmed testimony that she served the landlord with the notice by posting it by registered mail to the landlord’s mailing address. A copy of the registered mail receipt was in evidence. The tenant further testified that this registered mail was returned to sender as the landlord refused to accept it. A copy of the tracking information indicating this was also in evidence.

Section 90 of the Act provides that a document sent by registered mail is deemed to have been served five days later. Refusal to accept service does not override the deeming provision, as per Rule 12.12 of the Rules of Procedure. The tenant also had a signed witness statement advising that the tenant had delivered the hearing package and her evidence to the landlord’s mailbox on March 17, 2017. Accordingly, I find that the landlord has been duly served in accordance with the Act.

The tenant gave affirmed testimony and was provided the opportunity to present her evidence orally and in documentary form, and to make submissions at the hearing.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

This tenancy began in January of this year. Rent in the amount of \$700.00 was payable on the first of each month. The tenant paid a security deposit of \$350.00 which remains in the landlord’s possession.

The Notice was served on the tenant personally on March 7, 2017. It indicates that the tenant is required to vacate the rental unit by March 31, 2017, though the corrected

effective date is April 30, 2017. The tenant applied to dispute the Notice on March 7, 2017.

The tenant stated that the Notice only contained the first of two pages. She also stated that the landlord told her was ending the tenancy because he lived above her and could smell her hairspray. She also said that she overheard the landlord tell his nephew that he could move in to her unit once she had vacated and that the “told her it was because of the hairspray.” The tenant provided a photograph of her hairspray bottle, showing that it is unscented.

The tenant also submitted that after she rented the unit she discovered that it is owned by a couple who do not speak English well and were surprised and confused that her landlord had rented out a portion of the house that they own.

The tenant testified that she left the rental unit on March 25, 2017 because she felt threatened by the man who rented her unit to her.

Analysis

In a case where a tenant has applied to cancel a notice to end tenancy, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure requires the landlord to prove cause sufficient to terminate the tenancy for the reasons given on the notice.

This matter was set for hearing by telephone conference call at 11:00 am on April 5, 2017. The line remained open while the phone system was monitored for 40 minutes and the tenant was the only participant who called into the hearing during this time.

Since the landlord did not attend the hearing 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.

I would have granted the tenant’s application to cancel the Notice. However she has since vacated the rental unit for the reasons set out above, with the result that I do not need to do so. The tenancy has ended for another reason.

As the tenant would have been successful in her application had she not become fearful of the landlord, and as the landlord appears to have refused service of the notice of hearing and has failed to attend the hearing and served an incomplete notice to end tenancy, I order the landlord to pay the tenant the \$100.00 filing fee.

I note that the landlord must deal with the security deposit in accordance with the Act, or the Tenant may apply for an order to receive double the deposit paid under section 38 of the Act.

Conclusion

The tenant's application to cancel the Notice is moot. The tenant has ended the tenancy for other reasons.

The landlord is ordered to pay the tenant the \$100.00 filing fee.

The landlord is cautioned that he must deal with the security deposit in accordance with the Act.

Dated: April 11, 2017

Residential Tenancy Branch