



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, PSF, FF, OPC

Introduction

In the first application the tenants seek to cancel a one month Notice to End Tenancy for cause dated April 28, 2017. The also seek a monetary award for loss of services or facilities and an order restoring those service or facilities.

In the second application the landlord Ms. C. seeks an order of possession pursuant to the Notice.

At the start of the hearing the landlord Ms. C. indicated that she had not received the tenants' application, but only a page indicating the fact of a hearing.

The tenants indicated they had personally served the landlord with the application and evidence in early May.

The facts of the landlord's application, an application she would not have had to make had she been aware of the tenants' challenge to the Notice (see s. 55, *Residential Tenancy Act*) coupled with a lack of evidence from the landlord in support of the Notice, leads me to a doubt that the landlord was aware she would be required to prove the grounds for her Notice at this hearing.

In all the circumstances I find it to be most fair to all parties that the Notice in question be set aside at this point, without any determination about its validity. The landlord is free to issue another Notice immediately, based on the same grounds as this one, or on any other grounds she considers appropriate.

The tenants are then free to apply to cancel that Notice and for any other related relief. The parties, now forewarned about proving service of documents (and directed to the Information Officers at the Residential Tenancy Branch for guidance) should come to that hearing fully prepared to prove service of documents on the other party.

The tenants have also been forewarned that their claims regarding services and facilities may be seen to be “unrelated” claims to their challenge to the Notice to End Tenancy and might not be heard at a future hearing dealing with a Notice to End Tenancy. They have been directed to the Information Officers for guidance on this issue and may wish to bring a separate proceeding regarding those issues.

The parties were informed that the tenants should continue to pay rent or occupation rent until a valid Notice ends this tenancy or such a Notice has been set aside by an arbitrator.

The landlord did not claim recovery of any filing fee. The tenants paid a \$100.00 filing fee for their application. In all the circumstances I consider that the parties should split that \$100.00 cost. I award the tenants \$50.00 of the filing fee and I authorize them to reduce their next rent or occupation rent payment by \$50.00 in full satisfaction of that award.

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: June 08, 2017

Residential Tenancy Branch