



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), pursuant to section 47;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- an order to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenant's application for dispute resolution or any evidentiary materials. The parties confirmed receipt of one another's materials and testified that neither had submitted any written evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice and the landlord was duly served with the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the 1 Month Notice pursuant to section 47? If not, is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began on September 15, 2015. The current monthly rent is \$3,500.00. The rental unit is a detached family home.

The landlord testified that the 1 Month Notice was issued as the tenant had sublet the house and there are too many individuals residing in the rental building. The landlord said that she has been informed that her insurance policy may be void if there are too many residents in the building.

The tenant denied the landlord's complaints.

Neither party submitted the 1 Month Notice or a written tenancy agreement into written evidence.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The parties testified that the tenant was served with the 1 Month Notice on or about July 18, 2017. The tenant filed his application for dispute resolution on July 27, 2017. I find that the tenant filed his application within the 10 days provided under the *Act*.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

I find, on a balance of probabilities, that the landlord has not established sufficient cause for ending this tenancy. Neither party submitted the 1 Month Notice or the tenancy agreement into written evidence. There is insufficient evidence to conclude that a proper 1 Month Notice, conforming with the form and content requirements of section 52 was issued. I find that the landlord has not provided sufficient evidence to show that there is cause to end this tenancy. Accordingly, I allow the tenant's application to cancel the 1 Month Notice.

The tenant did not articulate what portions of the Act, regulation or tenancy agreement that the landlord is not complying with. I dismiss this portion of the tenant's claim as there is insufficient evidence in support of the application.

As the tenant's application was partially successful the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

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

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is 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: October 11, 2017

Residential Tenancy Branch