



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction and Conclusion

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed August 2, 2017, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on July 12, 2017 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference on October 23, 2017. Only the Tenant's advocate, M.C., and friend, W.C. called into the hearing. M.C. gave affirmed testimony and was provided the opportunity to present the Tenant's evidence orally and in written and documentary form, and to make submissions to me. M.C. advised that the Tenant was at a dental appointment outside of Canada and was therefore unable to call into the hearing. M.C. further advised that the Tenant does not have sufficient command of the English language to participate in this hearing and as such asked M.C. to act as his agent.

As the Landlord failed to attend the hearing, service of the Tenant's Application Materials was considered. M.C. testified that the Tenant personally served the Landlord with the Notice of Hearing and the Application on August 2, 2017. Notably, the Landlord's property manager, J.T., submitted materials in evidence, including a letter dated October 3, 2017 wherein J.T. confirmed the date and time of the hearing. Based on M.C.'s testimony and the materials submitted by the Landlord I find the Landlord was duly served and I proceeded with the hearing in their absence.

Residential Tenancy Branch Rules of Procedure 6.6 provides that a Landlord must prove the reason they wish to end a tenancy when a Tenant applies to cancel a notice to end tenancy. As the Landlord failed to attend the hearing and provide evidence and testimony in support of the Notice, I find the Landlord has failed to meet the burden of proving the reasons cited in the Notice. Accordingly, I grant the Tenant's Application to

cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Tenant, having been successful, is entitled to recovery of the \$100.00 filing fee. I grant the Tenant authority, pursuant to section 72(2)(a), to reduce his next month's rent by \$100.00 as recovery of this fee; for greater clarity I reproduce that section as follows:

- 72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.
- (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
 - (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

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 23, 2017

Residential Tenancy Branch