



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC DRI CNR MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for orders as follows:

- to cancel a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) pursuant to section 47 *Act*;
- to cancel 10 Day Notice for unpaid rent (“10 Day Notice”) pursuant to section 46 of the *Act*;
- to Order the landlord to comply with the *Act* pursuant to section 62;
- to dispute an additional rent increase pursuant to section 43 of the *Act*; and
- for a Monetary Award for loss under the tenancy agreement pursuant to section 67 of the *Act*.

Only the tenant appeared at the hearing. The tenant was given a full opportunity to be heard, to present testimony and to make submissions under oath.

The tenant explained that a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) was posted on his door on August 16, 2017, and that on September 20, 2017 the landlord posted on his door a 10 Day Notice to End Tenancy for Unpaid Rent. Pursuant to section 88 of the *Act* the tenant is found to have been served with both Notices to End Tenancy.

The tenant provided undisputed testimony that on approximately August 21, 2017 he served the landlord with his application for dispute resolution. On September 22, 2017 the tenant amended his application to cancel the landlord’s 10 Day Notice and served this on the landlord on the same day. Pursuant to sections 89 & 90 of the *Act* the landlord is found to have been served with the landlord’s applications for dispute on August 21, 2017 and September 22, 2017.

Following opening remarks, the tenant stated that he wished to amend his application to withdrawn his application for a monetary award, for an order directing the landlord to comply with section 62 of the *Act*, and disputing an additional rent increase. As the

landlord would not be unfairly prejudiced by these amendments, I allow the tenant to amend his application pursuant to section 64(3)(c).

Issue(s) to be Decided

Can the tenant cancel the landlord's notice to end tenancy? If not, should an Order of Possession be granted?

Background and Evidence

The tenant explained that he was served a 1 Month Notice for Cause by the landlord. The 1 Month Notice states that the reason for its issuance is because the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In addition to the 1 Month Notice, the landlord served the tenant with a 10 Day Notice for Unpaid rent on September 20, 2017. The notice indicates that the tenant failed to pay \$750.00 in rent which was due on September 4, 2017.

At the hearing the tenant stated that disputed both notices.

The landlord did not appear at the hearing to provide any submissions detailing her 1 Notice to End Tenancy or regarding her 10 Day Notice to End Tenancy.

Analysis

Section 47 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 to End Tenancy was served on the tenant on August 16, 2017. The tenant disputed this notice on August 23, 2017. The tenant has therefore applied to dispute this notice within the time frame provided by section 47 of the *Act*. Because the landlord did not attend the hearing and provided no evidence or submission to the hearing in support of the 1 Month Notice, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 1 Month Notice.

The tenant has also applied to dispute a 10 Day Notice for Unpaid rent. The tenant said that he disputed the reasons for the issuance of the 10 Day Notice. I find that the landlord's non-attendance at the hearing makes it difficult for me to determine why a 10

Day Notice was issued. No submissions or evidence were presented to the hearing by the landlord as to why she issued the 10 Day Notice. No information was provided by the landlord regarding the time period on which the 10 Day Notice was based. I note that the 10 Day Notice stated that rent of \$750.00 was due on September 4, 2017; however, without any submissions from the landlord it is impossible for me to determine the exact time period on which the landlord has based her 10 Day Notice. For these reasons, I dismiss the landlord's 10 Day Notice for unpaid rent issued on September 20, 2017.

As the tenant was successful in his application, he may, under section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In lieu of a Monetary Award, the tenant may withhold \$100.00 from landlord for **one** future rent payment.

Conclusion

The tenant's application for a monetary award, directing the landlord to comply with the *Act* and disputing an additional rent increase are withdrawn.

The tenant was successful in cancelling the landlord's 1 Month Notice to End Tenancy and the landlord's 10 Day Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

In satisfaction for a return of the filing fee, the tenant may on **one** occasion withhold \$100.00 from a future rent payment.

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: November 3, 2017

Residential Tenancy Branch