



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued December 12, 2017 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Agreement*, the *Residential Tenancy Regulation* or the tenancy agreement and recovery of the filing fee.

The hearing was scheduled for a teleconference on January 30, 2018 at 1:00 p.m. Only the Tenant called into the hearing. She confirmed that she served her Application materials as well as the Notice of Hearing on the Landlords by registered mail. Documentary evidence submitted by the Tenant included a letter from the Landlords dated December 22, 2017 wherein they confirm receipt of the Tenants' Application. I therefore find the Landlords were duly served notice of the hearing and I proceeded in their absence.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlords be ordered to comply with the *Residential Tenancy Agreement*, the *Residential Tenancy Regulation* or the tenancy agreement?
3. Should the Tenant recover the filing fee?

Analysis and Conclusion

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a notice to end tenancy the Landlord must prove the reasons for issuing the Notice on a balance of probabilities. In this case the Landlords failed to call into the hearing.

Notably, the December 22, 2017 letter also confirmed the Landlords wished to withdraw the Notice. While the Landlords were not at the hearing to speak to this letter, I find this letter confirms the Landlords intent to withdraw the Notice.

Based on the foregoing, I find that the Notice should be cancelled. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant stated that the Landlords previously served a 2 Month Notice to End Tenancy for Landlord's Use, which they also withdrew shortly before the hearing of the Tenant's Application to dispute that notice.

The Tenant submitted that the Landlord should be prohibited from issuing further notices pursuant to section 62(3) of the *Act*. This is an extraordinary request.

A landlord may issue a notice to end tenancy provided they comply with Part 4 of the *Act*, although the Landlords withdrew the two notices which were issued, I am unable to find that they failed to comply with the *Act*. I therefore dismiss the Tenant's application for an order prohibiting the Landlord from issuing further notices. The Landlords are cautioned however, that the repeated issuance of unfounded notices to end tenancy may affect a tenant's right to quiet enjoyment as protected by section 28 of the *Act* and could result in monetary compensation to the Tenant.

A tenant who receives a notice to end tenancy must make an application to dispute the notice within the strict timelines imposed by the *Act*; failure to make such an application will result in the tenancy ending pursuant to the conclusive presumptions contained in the relevant sections. As such, and even though the Landlords withdrew the Notice after receiving the Tenant's Application for Dispute Resolution, I find the Tenant should recover the filing fee she paid for this application. Pursuant to section 72 of the *Act*, I authorize the Tenant to reduce her next months' rent by \$100.00 as recovery of that fee.

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: January 31, 2018

Residential Tenancy Branch