



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY (1974)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, RP

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 26, 2018 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33.

The landlord did not attend this hearing, which lasted approximately 35 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. An outreach worker was assisting the tenant with navigating the hearing process but he did not testify or act on her behalf as an agent at this hearing.

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing package on March 23, 2018 by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. The Canada Post website indicates that the landlord's agent AW, named as a landlord in the tenant's 1 Month Notice, signed for the mail package on March 26, 2018. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on March 28, 2018, five days after the registered mailing.

I note that the tenant's application was not served to the landlord within 3 days of the application package being sent to the tenant by email from the Residential Tenancy Branch ("RTB"), as required by Rule 3.1 of the *RTB Rules of Procedure*. The tenant confirmed that the RTB sent the application to the wrong email. I confirmed that it was an administrative RTB error and the tenant called an information officer to have the RTB re-send the email to her correct email address, after which the tenant received the application package and mailed it to the landlord. I

find no prejudice to the landlord that it was served outside the three-day time period, given that I find the landlord had proper notice of this hearing, the landlord's agent signed for the application package, and the landlord had ample time to prepare for this hearing. Accordingly, I proceeded with the hearing.

The tenant testified that she personally received the landlord's 1 Month Notice on February 26, 2018. The effective move-out date on the notice is March 31, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on February 26, 2018.

The tenant confirmed that the only other order she was seeking in this application, besides cancelling the 1 Month Notice, was an order for the landlord to make repairs to the rental unit. Accordingly, the tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed without leave to reapply.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord required to make repairs to the rental unit?

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on April 15, 2015. Monthly rent in the amount of \$375.00 is payable on the first day of each month. The tenant's outreach program also pays a subsidy towards her rent directly to the landlord. A security deposit of \$187.50 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The tenant seeks to cancel the landlord's 1 Month Notice. The tenant requires repairs to three kitchen drawers and one bathroom drawer at the rental unit. She claimed that these drawers fell out when she opened them, she asked the landlord to fix them by sending 20 letters to the landlord, and it has been two years since they broke and the landlord failed to repair them.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on February 26, 2018, and filed her application to dispute it on March 7, 2018. Accordingly, I find that the tenant's application was filed within the ten day time limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not appear at this hearing. The landlord did not meet its onus of proof.

Therefore, as advised to the tenant during the hearing, the landlord's 1 Month Notice, dated February 26, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*. This tenancy will continue until it is ended in accordance with the *Act*.

I order the landlord to fix the three broken kitchen drawers and one broken bathroom drawer in the rental unit by May 20, 2018. I accept the tenant's undisputed testimony that she notified the landlord to complete these repairs and the landlord failed to do so.

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated February 26, 2018, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession under section 55 of the *Act*.

This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to fix the three broken kitchen drawers and one broken bathroom drawer in the rental unit by May 20, 2018.

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed without leave to reapply.

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: April 20, 2018

Residential Tenancy Branch