



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAILTOWN LAND CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

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.

While the tenant's advocate attended the hearing by way of conference call, the landlord did not. I waited until 11:10 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant provided the tracking information in their evidence to support that the landlord was served with the tenant's application for dispute resolution hearing package ("Application") and evidence by way of registered mail on March 23, 2018. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on March 28, 2018, five days after mailing.

The tenant's advocate confirmed the tenant's receipt of the landlord's 1 Month Notice To End Tenancy for Cause ('1 Month Notice') on March 20, 2018, which was posted on the tenant's door. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

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

Background and Evidence

The tenant's advocate in the hearing indicated that both parties had agreed to mutually extend this tenancy. The tenant provided a signed mutual agreement in their evidence, dated May 18, 2018, for this tenancy to end at 11:00 P.M. on December 1, 2018.

The tenant is seeking cancellation of the landlord's 1 Month Notice as the Mutual Agreement was signed on May 18, 2018, and the tenant is disputing the 1 Month Notice.

The tenant's advocate was unable to provide any further testimony in the hearing.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant is deemed to have received the 1 Month Notice on March 23, 2018, and filed his application on the same date. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. The tenant also submitted a copy of a Mutual Agreement to End Tenancy, signed by both parties, for this tenancy to end on December 1, 2018. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice dated March 20, 2018, is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: June 7, 2018

Residential Tenancy Branch