



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, OLC

Introduction

On May 4, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the Act, seeking an Order for the Landlord to make and emergency repair pursuant to section 62 of the Act, and seeking an Order for the Landlord to comply pursuant to section 62 of the Act.

The Tenant attended the hearing, with advocates J.F. and S.O. K.K. attended the hearing as the Landlord. All in attendance provided a solemn affirmation.

The Landlord confirmed they received the Tenant’s hearing package on May 7, 2018.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that that complies with the *Act*.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?

Background and Evidence

All parties agreed that the tenancy started on April 1, 2018 as a month to month tenancy. Rent was established at \$675.00 per month. A security deposit of \$337.50 was also paid.

All parties agreed that the Notice was served to the Tenant on April 30, 2018, in person. The reasons for the Notice were due to:

- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

J.F. submitted that the Tenant's evidence was mailed to the Landlord on May 14, 2018 and she provided a tracking number for this package (tracking number is on the cover page of this decision). According to the tracking history, this package went unclaimed. The Landlord confirmed that the address for service was correct; however, he stated that he did not receive any notification from Purolator about this package. He advised that he would still proceed with the hearing in the absence of receiving this evidence.

The Landlord advised that he had provided evidence as well; however, he testified that he provided it to the Residential Tenancy Branch only, on May 25, 2018. As this did not comply with Rule 3.15 of the Rules of Procedure, I advised the Landlord that I would not accept this written evidence, but the Landlord could still provide oral testimony during the hearing. It was at this point that the Landlord hung up, without explanation, and ended his participation in the hearing. The time that the Landlord ended his participation was 9:53 AM.

Analysis

I proceeded with the hearing in the absence of the Landlord and had the Tenant speak to the reasons for why the Notice was issued. The Tenant advised that he did not engage in any behaviour which would substantiate any of the reasons that the Landlord noted on the Notice. The hearing continued for an additional 10 minutes after the Landlord exited the call. As the burden of proof lies with the Landlord and as the Landlord ended his participation in the hearing, there is no evidence before me to enforce the Notice. As such, I am satisfied that the Notice of April 30, 2018 is of no force and effect.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of April 30, 2018 is cancelled and of no force or effect. The tenancy will continue 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 1, 2018

Residential Tenancy Branch