



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC RP

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement pursuant to section 62 of the *Act*; and
- an Order for the landlord to make repairs to the rental unit or property, pursuant to section 32 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:32 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that she served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant provided sworn testimony that she personally served the notice of this hearing and her evidence to the landlord on August 15, 2018. The tenant called witness C.A. who was in attendance at the time the tenant served the documents to the landlord to corroborate her verbal testimony. Witness C.A. provided sworn testimony that he witnessed the tenant serve the landlord with the hearing documents and evidence on August 15, 2018.

The tenant further testified that she had video evidence of her serving the documents to the landlord, which she did not upload to the dispute website due to her technical limitations. The tenant testified that she had requested the landlord sign to confirm his receipt of the hearing documents but that he refused to do so.

Therefore, I find that the landlord was served with the notice of this hearing on August 15, 2018, in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment to the Tenant’s Application for Dispute Resolution

At the outset of the hearing, the tenant confirmed that she wished to withdraw her applications for unrelated claims pertaining to an Order for the landlord to comply with the *Act*, regulation and/or tenancy agreement, and an Order for the landlord to make repairs to the rental unit. As such, I find that these claims are withdrawn, I make no findings on these claims, and the tenant is at liberty to reapply regarding these claims in future, in accordance with the time limits set out in the *Act*.

Preliminary Issue - Procedural Matters

Section 55 of the *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 tenant’s Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord’s Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Background and Evidence

The tenant testified that she received the landlord's One Month Notice, dated August 1, 2018, posted on her door on August 1, 2018.

The tenant confirmed that she applied to dispute the One Month Notice on August 10, 2018, within the 10-day time limit provided by the *Act*.

The tenant testified that after serving the landlord with her notice of this hearing, she met with the landlord to discuss their issues. She stated that they came to an understanding and the tenant believed that the landlord was agreeable to withdrawing the One Month Notice and allowing the tenancy to continue.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

As explained earlier in the decision under the section pertaining to "Preliminary Issue - Procedural Matters", in cases where a tenant has applied to dispute a landlord's notice to end the tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

In the absence of the landlord at the hearing to provide testimony and evidence to support the reasons for ending the tenancy, I find that the landlord has failed to satisfy the burden of proof for the reasons to end the tenancy provided on the Notice.

Therefore, I allow the tenant's application to cancel the One Month Notice issued to the tenant on August 1, 2018. This tenancy will continue until it is ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the landlord's One Month Notice to End Tenancy issued to the tenant on August 1, 2018. This Notice is cancelled and is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant withdrew her unrelated claims for an order for the landlord to comply with the *Act* and for the landlord to make repairs. I grant the tenant liberty to reapply on these claims subject to any applicable limits set out in 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: October 1, 2018

Residential Tenancy Branch