



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 One Month Notice to End Tenancy for Cause, pursuant to section 47.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on August 18, 2018. The landlord testified that he received the notice of dispute resolution package but did not recall on what date. I find that the landlord was deemed served with this package on August 23, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

I note that 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in June of 2013 and is currently ongoing. Monthly rent in the amount of \$1,037.00 is payable on the first day of each month. A security deposit of \$200.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties but was not submitted for this hearing.

The landlord testified that on July 28, 2018 he served the tenant with a One Month Notice to End Tenancy for repeated late payment of rent with an effective date of September 30, 2018 (the "One Month Notice") by leaving a copy in the tenant's mailbox. The tenant confirmed receipt of the One Month Notice on July 28, 2018.

Both parties agree that the One Month Notice is not dated.

Both parties agreed that the tenant was late paying rent on the following months:

- January 2018;
- February 2018;
- March 2018;
- May 2018;
- June 2018;
- July 2018;
- August 2018; and
- September 2018.

Analysis

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I find that the One Month Notice does not meet the form and content requirements set out in section 52 of the *Act* because it was not dated. I therefore find that the One Month Notice is of no force or effect.

As the tenant was successful in her application, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72 of the *Act* states that if a landlord is ordered to pay an amount to the tenant the amount may be deducted from any rent due to the landlord.

Conclusion

The One Month Notice is of no force or effect.

I issue a Monetary Order to the tenant in the amount of \$100.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 25, 2018

Residential Tenancy Branch