



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated September 21, 2018 ("1 Month Notice"), pursuant to section 47; and
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

The two landlords (male and female) did not attend this hearing, which lasted approximately 19 minutes. The tenant, the tenant's law student agent ("tenant's agent") and the law student's supervising lawyer 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 confirmed that both her agent and the supervising lawyer had permission to speak on her behalf at this hearing. The supervising lawyer did not make any submissions. Only the tenant and her agent spoke.

The tenant testified that she personally served the female landlord with her application for dispute resolution hearing package on September 28, 2018. She said that the application was returned to her by the female landlord that same evening. She then claimed that she sent the application by registered mail to both landlords on September 29, 2018, to the address provided as the landlords' address for service in the 1 Month Notice, the move-in condition inspection report and the parties' tenancy agreement. She provided a Canada Post receipt and tracking number for this mailing. She stated

that the package was signed for and received by the female landlord on October 1, 2018.

The tenant testified that her application was also sent to the two individual owners of the rental building, separately, on September 29, 2018, to the mailing addresses provided in the title search document provided by her with this application. She provided two Canada Post receipts and tracking numbers to confirm these mailings.

In accordance with sections 89 and 90 of the *Act*, I find that both landlords and the two owners of the rental building were deemed served with the tenant's application on October 4, 2018, five days after their registered mailings. I find that the two landlords are building managers agents of the landlord company named in all of the tenancy-related documents, as they signed the move-in condition inspection report, the 1 Month Notice and the tenancy agreement, all provided by the tenant for this application. They also wrote letters to the tenant regarding the allegations in the 1 Month Notice. I also find that the two owners of the rental building were served as a precaution. I find that the two landlords were properly served at the address provided by the landlords for service in the tenancy-related documents and the two owners were properly served at the mailing addresses in the title search document.

The tenant confirmed that she personally received the landlords' 1 Month Notice on September 22, 2018. The effective move-out date on the notice is October 31, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' 1 Month Notice on September 22, 2018.

The tenant confirmed that she was not seeking any other orders for the landlords to comply for this application. Accordingly, this portion of her application is dismissed without leave to reapply.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

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 September 22, 2018 and filed her application to dispute it on September 26, 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 landlords to prove, on a balance of probabilities, the ground on which the 1 Month Notice is based. The landlords did not appear at this hearing. The landlords did not meet their onus of proof.

Therefore, as advised to the tenant during the hearing, the landlords' 1 Month Notice, dated September 21, 2018, is cancelled and of no force or effect. The landlords are 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*.

Conclusion

I allow the tenant's application to cancel the landlords' 1 Month Notice. The landlords' 1 Month Notice, dated September 21, 2018, is cancelled and of no force or effect. The landlords are 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*.

The tenant's application for an order requiring the landlords 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: November 06, 2018

Residential Tenancy Branch