



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenants' 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*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants were represented by legal counsel L.W.

The corporate landlord is a family trust. The landlord was represented by its agents A.Y., the building liaison, and Z.S., one of the trustees.

There are two trustees with equally shared 50/50 control of the trust. Both trustees, Z.S. and I.A., are named as respondents on this Application for Dispute Resolution as they are both agents of the landlord. Only one of the trustees, Z.S. attended the hearing.

As both parties were present, service of documents was confirmed. A.Y. confirmed receipt of the tenants' application for dispute resolution, personally served on the landlord's agent, trustee I.A. As such, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

Preliminary Issue – Determination of Landlord in this Dispute

Section 6 of the *Act* sets out that the rights, obligations and prohibitions established under this *Act* are only enforceable between a landlord and a tenant under a tenancy agreement.

In this matter, one of the trustees, I.A., served the tenants with a One Month Notice to end the tenancy on November 5, 2018. The other trustee, Z.S., does not agree to the issuance of the One Month Notice against the tenants. The tenants' counsel explained that the trustees are in the midst of a divorce, and that this is the second arbitration hearing between the parties. In spite of the divorce proceedings, both trustees continue to have equal authority to act on behalf of the corporate landlord. The parties are in dispute regarding who has authority to act on behalf of the landlord under this tenancy. Therefore, in the absence of a court decision assigning sole, or majority, authority to act on behalf of the corporate landlord, I must first make a determination regarding who has authority to act as an agent of the corporate landlord against these tenants under this tenancy agreement before considering the merits of the One Month Notice.

I refer to the written tenancy agreement submitted into documentary evidence by both parties. I.C. is the only named tenant and her daughter, C.C. who is the other applicant named in this dispute, is the only name adult occupant on the tenancy agreement. Z.S. is the only named landlord on the tenancy agreement. I.C. and Z.S. are the only signatories to the tenancy agreement.

I also refer to A.Y.'s sworn testimony explaining that Z.S. acted on his own initiative to draw up the tenancy agreement with I.C. with no input from either A.Y. or I.A. regarding the rent or other terms of the tenancy agreement.

Section 62(2) of the *Act* grants authority to an arbitrator to make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

As such, pursuant to my authority under section 62(2) of the *Act*, based on the testimony and evidence before me, on a balance of probabilities, I make a finding of fact in this matter that Z.S. is the only named landlord under this tenancy agreement. As I have found Z.S. to be the only named landlord under this tenancy agreement, I make a finding of law that Z.S. is the only agent with the rights and authority to act on behalf of the corporate landlord under this tenancy agreement. This means that only Z.S. has the authority to seek enforcement of the rights, obligations and prohibitions established under this *Act* against these tenants, pursuant to section 6 of the *Act*.

Based on my above-noted findings, the One Month Notice which is the subject of this dispute was not issued to these tenants by an agent of the landlord with authority to act under this tenancy agreement.

As such, I find that trustee I.A. did not have authority to issue the One Month Notice to the tenants under this tenancy agreement. Accordingly, I find the One Month Notice served to the tenants by I.A. on November 5, 2018 is not valid as it was not issued by the landlord who is a

party to the tenancy, and therefore it is cancelled and of no force and effect. As the tenants were successful in their application to cancel the One Month Notice, the tenancy continues until ended in accordance with the *Act*.

As I have determined that the tenants were not served with a valid One Month Notice as it was not issued by the landlord with authority to act under the tenancy agreement, I find that I have no grounds to hear the merits of the One Month Notice as the notice is cancelled. Therefore, the hearing is not required to be reconvened as a final decision has now been rendered in this dispute.

The tenants were successful in their application to cancel the One Month Notice and are therefore entitled to recover the cost of the \$100.00 filing fee for the application from the landlord. The tenants may withhold \$100.00 from their required monthly rent payment on **one occasion** in satisfaction of the recovery of the filing fee.

Conclusion

The One Month Notice is cancelled and of no force and effect. The tenancy continues until ended in accordance with the *Act*.

The tenants may withhold \$100.00 from their monthly rent payment on one occasion in satisfaction of the recovery of the filing fee for this application from the landlord.

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: December 24, 2018

Residential Tenancy Branch