



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"), seeking an order of possession based on two 1 Month Notices to End Tenancy for Cause, both dated October 31, 2018, (the "1 Month Notices"), and to recover the cost of the filing fee.

The landlord, the tenant and legal counsel for the tenant ("counsel") attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised concerns regarding the service of documentary evidence. Both parties confirmed that they had received documentary evidence from the other party and had the opportunity to review that evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to an order of possession based on the 1 Month Notices?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord submitted a copy of the 1 Month Notices, both of which were not signed by the landlord. The landlord also testified that he has accepted “rent” from the landlord for January 2018. The parties agree that although the tenancy agreement states that rent is due on the 20th of each month, the parties have subsequently agreed verbally that rent is due on the 1st day of each month.

Although the parties, were originally advised that I had the ability under section 68 of the *Act* to amend a 1 Month Notice that does not comply with section 52 of the *Act*, which I will discuss later in this decision, the parties were also advised that I would not be amending the 1 Month Notices based on the totality of the evidence provided.

The landlord testified during the hearing that he submitted the unsigned computer versions of the 1 Month Notices in evidence and had signed the 1 Month Notices before serving them on the tenant. The tenant; however, submitted unsigned 1 Month Notices in evidence. The parties were advised that the landlord could not have signed the 1 Month Notices as the tenant submitted the 1 Month Notices in evidence which included handwriting on the bottom left portion, which indicates the 1 Month Notices were served on November 1, 2018, and both were unsigned by the landlord as submitted by the tenant.

Counsel referred to five previous decisions submitted for my consideration of decisions where a 1 Month Notice was found to be invalid as they were not signed. The parties were also advised that the *Act* provides that I am not bound by previous arbitrator decisions.

The effective vacancy date listed on both 1 Month Notices was December 1, 2018.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find the landlord provided inconsistent testimony and that both 1 Month Notices are invalid as a result. Section 52 of the *Act* states:

Form and content of notice to end tenancy

52 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, and
 - (e) when given by a landlord, be in the approved form.
- [Emphasis added]

Based on the above, I will not use my authority under section 68 of the *Act* to amend the 1 Month Notices as I find on the balance of probabilities that the landlord could not have signed the 1 Month Notices before serving them when the tenant submitted in evidence both 1 Month Notices that were not signed by the landlord. As a result, I find the landlord testimony to be inconsistent and illogical. Therefore, I find that both 1 Month Notices are invalid and are of no force or effect.

Consequently, the landlord's application is dismissed due to insufficient evidence, without leave to reapply. My decision applies to both 1 Month Notices dated October 31, 2018, which I find are of no force or effect.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

I do not grant the filing fee as the landlord's application was dismissed.

Conclusion

The application of the landlord has been dismissed. The 1 Month Notices both dated October 31, 2018 are invalid and are of no force or effect.

The tenancy shall continue until ended in accordance with the *Act*.

I do not grant the filing fee as described above.

The decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 15, 2019

Residential Tenancy Branch