



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants and the landlords along with their respective advocates and agents 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 landlords' confirmed they received the tenants' application but contended it was not served in accordance with the *Act*. In particular, they testified that it was not served within three days and the two packages were sent in one envelope. Since the landlords acknowledged separate receipt of the application from the tenants, pursuant to section 71 of the *Act*, I deem the landlords sufficiently served with the tenants' application.

The tenants confirmed receipt of the landlords' evidence package. As the tenants did not raise any issues regarding service of the evidence, I find that the tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Are the tenants' authorized to recover the filing fee for this application from the landlords?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2017, on a month-to-month basis. Rent in the amount of \$850.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$425.00 at the start of the tenancy, which the landlords still retain in trust. The tenants continue to reside in the rental unit.

The tenants acknowledged personal receipt of the landlords' 1 Month Notice dated November 17, 2018, on the same date. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant has allowed an unreasonable number of occupants in the unit/site
- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- tenant has assigned or sublet the rental unit/site without landlord's written consent

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. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Although the tenants filed an application to dispute the 1 Month Notice, the tenants did not file the application within 10 days. The 1 Month Notice was duly served November 17, 2018 which allowed the tenants until November 27, 2018 to file their application. The tenants filed their application on November 28, 2018, 1 day after the allowable time.

Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. Based on the 1 Month Notice before me, I find that the tenants were served with an effective notice.

In the absence of an application for more time and for the reasons stated above, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. I find that the landlords are entitled to an order of possession.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants.**

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: January 17, 2019

Residential Tenancy Branch