



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) by the tenant to cancel an undated 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), and to recover the cost of the filing fee.

The tenant and an advocate for the tenant attended the teleconference hearing. The tenant gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding (“Notice of Hearing”), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by personal service with a witness on April 12, 2019 at 1802 hours at the rental unit next door, the tenant stated the landlord was working at as the landlord was in town. The tenant’s advocate testified that she witnessed the tenant serve the landlord as claimed by the tenant on April 12, 2019. As a result, I find the landlord was personally served on April 12, 2019, with the Notice of Hearing, application and documentary evidence.

As the landlord did not attend the hearing, I consider this application to be unopposed by the landlord.

Preliminary and Procedural Matter

The tenant confirmed their email address and the email address of the landlord at the outset of the hearing. The tenant confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenant testified that the tenancy began on June 1, 2016. The tenant testified that they were served with the 1 Month Notice on March 28, 2019 and applied to dispute the 1 Month Notice two days later on March 30, 2019. The 1 Month Notice submitted in evidence is not dated by the landlord.

The landlord did not attend the hearing to provide supporting evidence that the 1 Month Notice was valid.

Analysis

Based on the undisputed documentary evidence before me and the undisputed testimony from the tenant provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find the tenant applied within the ten day timeline provided under section 47 of the *Act*. When a tenant applies on time to dispute a 1 Month Notice, the burden of proof falls to the landlord to prove that the 1 Month Notice has merit and should be upheld. As the landlord failed to attend the hearing, I find the landlord has failed to prove that the 1 Month Notice has merit and is valid. Furthermore, section 52 of the *Act* applies and 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 find the 1 Month Notice does not comply with section 52 of the *Act* as the landlord neglected to date the 1 Month Notice. I also find that the landlord failed to meet the burden of proof to prove that the 1 Month Notice is valid by failing to attend the hearing to present evidence to support the 1 Month Notice.

Consequently, I cancel the undated 1 Month Notice. I find it is of no force of effect.

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

As the tenant's application had merit, I grant the tenant the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. I authorize the tenant to deduct \$100.00 as a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenant's application is successful.

The 1 Month Notice is cancelled and is of no force or effect.

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

The tenant has been authorized pursuant to sections 67 and 72 of the *Act* to deduct \$100.00 as a one-time rent reduction in the amount of \$100.00 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

This decision will be emailed to both parties.

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: May 17, 2019

Residential Tenancy Branch