



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLACK DOOR HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, RP, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

As the tenant confirmed that they were handed the 1 Month Notice by the landlord on May 22, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant gave undisputed sworn testimony that they sent the landlord a copy of their dispute resolution hearing and written evidence packages on May 29, 2019. The tenant provided the Canada Post Tracking Number to confirm this registered mailing and advised that they had spoken with the landlord, who confirmed

that they had received the tenant's registered mail package containing the Notice of Hearing and other material associated with the tenant's application. I find that the landlord was deemed served with this information in accordance with sections 88, 89 and 90 of the *Act*, on June 3, 2019, the fifth day after its registered mailing.

At the commencement of the hearing, the tenant gave undisputed sworn testimony that the issues in dispute had changed since they had submitted their application for dispute resolution. Since that time, the tenant said that the landlord had issued a second notice to end this tenancy, a 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) that the tenant believed should have been issued by the landlord instead of the 1 Month Notice. As the tenant had not disputed the 4 Month Notice, the tenant was satisfied that their tenancy would end by November 1, 2019, the date specified on the 4 Month Notice.

The tenant withdrew their applications for repairs and for an order requiring the landlord to comply with the *Act*, the *Regulation* and/or the tenancy agreement. These portions of the tenant's application are hereby withdrawn.

Other than the cancellation of the 1 Month Notice, the tenant said that the only outcome they were seeking was to obtain a recovery of their filing fee from the landlord.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant said that this tenancy began a few years ago, and that the current monthly rent was set at \$800.00, payable in advance on the first of each month.

The landlord's 1 Month Notice, seeking an end to this tenancy by August 1, 2019, identified the following reason for ending this tenancy for cause:

Rental unit must be vacated to comply with a government order.

The landlord had entered into written evidence a copy of a May 7, 2019 document sent by the municipality requiring the landlord to take measures to address deficiencies

noted during an inspection by municipal fire department officials. The landlord was seeking an end to this tenancy for cause on the basis that the repairs required as a result of this municipal order would only be possible were the tenant to vacate the rental unit. The tenant maintained that the landlord should have issued a 4 Month Notice instead of the 1 Month Notice.

Analysis

Based on the tenant's undisputed sworn testimony and the landlord's failure to attend this hearing, I accept that the landlord has chosen to abandon the 1 Month Notice after having issued the 4 Month Notice, which the tenant was requesting in order to end this tenancy. I set aside the landlord's 1 Month Notice.

As the tenant has been successful in having the 1 Month Notice set aside, I allow the tenant's application to recover their \$100.00 filing fee from the landlord.

The remainder of the tenant's application is withdrawn, as was noted above.

Conclusion

I issue a monetary award in the amount of \$100.00 in the tenant's favour to enable the tenant to recover their filing fee for this application from the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. In order to implement this monetary award and as this tenancy is continuing, the tenant may also choose to withhold \$100.00 from a future monthly rent payment.

The landlord's 1 Month Notice is set aside. It is of no force or effect.

The tenant's application for repairs and to require the landlord to comply with the *Act*, the *Regulation* or the tenancy agreement is withdrawn.

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: July 11, 2019

Residential Tenancy Branch