



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL4M FFT

Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- Cancellation of a 4 Month Notice to End Tenancy for Demolition, Renovation or Repair (the "4 Month Notice") pursuant to section 49; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend the hearing which lasted approximately 15 minutes. The teleconference line remained open during the duration of the hearing. The Notice of Hearing was confirmed to provide the correct hearing information. The tenant attended and was given a full opportunity to give affirmed testimony, make submissions, present evidence and call witnesses.

The tenant confirmed receipt of the 1 Month Notice dated May 22, 2019 and 4 Month Notice dated June 16, 2019 on or about those dates. The tenant testified that they filed their application for dispute resolution to dispute the 1 Month Notice on May 27, 2019 and served their application on the landlord by registered mail sent on that date. The tenant provided a valid Canada Post tracking number as evidence of service. The tenant testified that they filed an amendment to their application to dispute the 4 Month Notice on July 2, 2019 and served the amendment on the landlord by sending a copy by registered mail on that date. Based on the undisputed evidence of the tenant I find that the landlord is deemed served with the application on June 1, 2019, and the amendment on July 7, 2019, five days after each was mailed, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice and 4 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy began in October, 2013. The current monthly rent is \$730.00 payable on the first of each month.

The tenant testified that they received the 1 Month Notice dated May 22, 2019 and 4 Month Notice dated June 16, 2019, on or about those dates. The tenant filed their application to dispute the 1 Month Notice on May 27, 2019 and their amendment to their dispute application on July 2, 2019.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice.

In the matter at hand I accept the undisputed evidence of the tenant that the 1 Month Notice was received on or about May 22, 2019 and the tenant filed their application for dispute resolution on May 27, 2019. I find that the tenant was within the statutory time limit to file an application to dispute the 1 Month Notice.

Section 47(8) of the *Act* provides that upon receipt of a notice to end tenancy for renovations, repairs or demolishing the unit the tenant may, within 30 days, dispute the notice by filing an application for dispute resolution. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the Notice.

I accept the evidence that the tenant received the 4 Month Notice on or about June 16, 2019 and they filed their amendment to the application adding the dispute of the 4

Month Notice on July 2, 2019. As such, I find that the tenant was within their statutory time limit to file an application to dispute the notice.

Residential Tenancy Branch Rule of Procedure 7.4 provides that:

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the landlord did not attend the hearing to present evidence, I find the landlord has failed to satisfy the burden of proof to show the grounds for either the 1 Month Notice or the 4 Month Notice and I therefore allow the tenant's application to cancel the Notices.

As the tenant was successful in their application the tenant may recover the \$100.00 filing fee. I allow the tenant to recover their filing fee by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

Both the 1 Month Notice of May 22, 2019 and 4 Month Notice of June 16, 2019 are cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant may make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 22, 2019

Residential Tenancy Branch