



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITAT HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

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 a 1 Month Notice to End Tenancy for Cause dated May 28, 2019 ("1 Month Notice") and to recover the cost of the filing fee.

The tenant, two tenant advocates JA and BT ("advocates"), a landlord agent DR ("agent") and AW, who was only listening in to the hearing and not participating in the hearing with the agent, attended the hearing. The hearing process was explained to the parties and an opportunity to ask questions about the hearing process was provided to the parties.

The parties confirmed receiving the documentary evidence from each other and that they had the opportunity to review the documentary evidence prior to the hearing. All of the relevant evidence is described below.

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.

Issues to be Decided

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

Background and Evidence

The tenancy began on May 1, 2007. The landlord submitted a copy of a 1 Month Notice dated May 28, 2019. The agent testified that the 1 Month Notice was posted to the tenant's door at 6:07 p.m. on May 28, 2019 by J and was witnessed by F. The landlord submitted in evidence a Proof of Service document signed by both J and F; however, J and F were not on the teleconference call to provide witness testimony.

The tenant testified that he has never received the 1 Month Notice posted to his door or in any other method until being served with evidence for this application. The agent stated that there was a photo taken of the 1 Month Notice taped to the tenant's door; however, that photo was not submitted in evidence for consideration.

The agent was asked if the landlord had ever followed up with the tenant to advise the tenant of the existence of the 1 Month Notice. The agent confirmed that there has been no discussion or follow-up with the 1 Month Notice with the tenant until this application. The tenant testified that he was in his rental unit daily between May 28, 2019 and May 31, 2019 and did not see a 1 Month Notice on his door at any time.

The effective vacancy date listed on the 1 Month Notice was June 30, 2019. The agent confirmed that the tenant has paid for use and occupancy of the rental unit for August 2019.

Analysis

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

While section 90 of the *Act* includes a deeming provision of 3 days after documents are posted to the door, service is also rebuttable under the *Act*. In the matter before me, the tenant denies that the 1 Month Notice was posted to the door. Given that I do not have photo evidence to support how the 1 Month Notice was posted to the door including how much tape was used and how it was affixed to the door, I find it more likely than not, that the 1 Month Notice was not securely posted to the tenant's door.

Furthermore, I note that the tenancy began in 2007 and is a long-term tenancy and I find it unreasonable that the landlord would not have communicated in any way with the tenant until this application to advise the tenant that they are being evicted by way of a 1 Month Notice. Therefore, I find that the landlord has provided insufficient evidence to

support that the tenant was sufficiently served with the 1 Month Notice and I cancel the 1 Month Notice as a result pursuant to section 62(3) of the *Act*.

I do not grant the filing fee as a result.

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

The landlord is at liberty to serve a new Notice to End Tenancy.

Conclusion

The application of the landlord has been dismissed due to a service issue. The 1 Month Notice dated May 28, 2019 is cancelled as I find it more likely than not that the 1 Month Notice was not securely posted to the tenant's door. The 1 Month Notice dated May 28, 2019, is of no force or effect.

The tenancy continues until ended in accordance with the *Act*.

The filing fee is not granted.

The landlord is at liberty to issue a new Notice to End Tenancy.

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: August 29, 2019

Residential Tenancy Branch