



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS, FFT

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; 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 11:15 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 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, their translator, 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 31, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant provided undisputed sworn testimony supported by written evidence that they sent the landlord a copy of their dispute resolution hearing package and written evidence by registered mail on July 10 and 11, 2019. They also provided the Canada Post Tracking Numbers and Customer Receipts for these registered mailings. On this basis, and in accordance with sections 88, 89 and 90 of the

Act, I find that the landlord was deemed to have been served with these materials on July 15, and 16, 2019, the fifth day after these mailings.

As the tenant's application to cancel the landlord's 1 Month Notice was received by the Residential Tenancy Branch on June 10, 2019, there was no need for the tenant to have sought an extension of time to file their application, as it was submitted within the ten day time frame for doing so. That portion of the tenant's application has been cancelled.

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? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began in 2005. The tenant said that they pay monthly rent of \$753.91, by the first of each month.

The landlord's 1 Month Notice, entered into written evidence by the tenant, identified the following reasons for ending this tenancy by June 30, 2019:

Tenant or a person permitted on the property by the tenant has:...

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

The landlord did not provide any written evidence nor did the landlord attend this hearing.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an

application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In the absence of any appearance at this hearing by the landlord or any written evidence submissions by the landlord to substantiate the grounds for issuing the 1 Month Notice, I allow the tenant's application.

As the tenant has been successful in this application, they are entitled to recover their \$100.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice is set aside and is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenant's favour in the amount of \$100.00. Since this tenancy is continuing and the tenant pays monthly rent by cheque, I allow the tenant to recover the \$100.00 by reducing that amount from a future monthly rental payment. This can be accomplished by reducing the tenant's monthly rent for either August **or** September 2019, if that is the tenant's wish. Monthly rent resumes at the agreed rate once this one-time deduction is made by the tenant.

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: August 01, 2019

Residential Tenancy Branch