



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47.

The tenant attended at the date and time set for the hearing of this matter. The landlords did not attend this hearing, although I left the teleconference hearing connection open until 11:12 a.m. in order to enable the landlords to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlords with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he had served each of the landlords at the address listed for service on the Notice with the notices of this hearing and his evidence by Canada Post registered mail on July 26, 2019. Two separate registered mail tracking numbers were provided in testimony and are listed on the cover page of this decision. The tenant testified that both landlords received the Notice of Dispute Resolution Proceedings package on July 31st by registered mail. I am satisfied the landlords were served with the Notice of Dispute Resolution Proceedings package on July 31st in accordance with sections 89 and 90 of the Act.

Preliminary Issue

One of the landlord's names was misspelled in the tenant's Application for Dispute Resolution. In accordance with rule 4.2 and 6.1 of the Residential Tenancy Branch

Rules of Procedure, I amended that landlord's surname. The correct names are reflected on the cover page of this decision.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Background and Evidence

The tenant testified he received the landlord's One Month Notice that was posted to his door on July 7th. A copy of the Notice was provided as evidence. The reasons for the Notice are:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Put the landlord's property at significant risk.
- engaged in illegal activity that has, or is likely to damage the landlord's property;
- engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Details of cause say: theft or removal of moving dolly from locked office building.

The tenant testified there was a dolly left together with a huge pile of garbage on the property. He thought the dolly was being thrown out and retrieved it. He is no longer in possession of the dolly.

The tenant testified he filed an Application for Dispute Resolution Proceedings to dispute the Notice on July 15, 2019. The landlord did not attend the hearing nor did the landlord submit any evidence in advance of the hearing.

Analysis

By his testimony, I am satisfied the tenant is deemed served with the landlord's 10 Day Notice to End Tenancy for Cause on July 12, 2019, five days after it was posted to his door in accordance with sections 89 and 90 of the Act.

Section 47 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.

The tenant filed an application to dispute the notice on July 15th, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the tenant in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*. Accordingly, in the absence of any testimony or evidence from the landlord, who bears the burden of proof in this matter, I find that the landlord has failed to prove the grounds for issuing the One Month Notice. Therefore, the tenant's application is successful and the landlord's One Month Notice dated July 7, 2019 is cancelled and of no force or effect.

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

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated July 7, 2019 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

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: September 16, 2019

Residential Tenancy Branch