



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding URBAN VISION HOUSING SOCIETY LUCKY LODGE
HOTEL and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Tenants was present for the hearing while no one called in for the Landlord. The Tenant was affirmed to be truthful in his testimony and stated that the Landlord was served by registered mail with the Notice of Dispute Resolution Proceeding package and a copy of their evidence. The Tenant provided the registered mail receipt in evidence and the tracking number is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was delivered on September 6, 2019. The Tenant stated that he also served the Landlord in person on September 5, 2019. As such, I find that the Landlord was served in accordance with Section 89 of the *Act*.

The Landlord did not submit any evidence prior to the hearing.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony, not all details of the submissions are reproduced here.

The Tenant provided undisputed testimony on the tenancy. The tenancy began in May 2018. Rent in the amount of \$750.00 was due on the first day of each month and a security deposit of \$325.00 was paid at the start of the tenancy.

The Tenant stated that they were served with a One Month Notice on August 21, 2019 and another One Month Notice on August 26, 2019. Neither One Month Notice was submitted into evidence. However, the Tenant stated that while hospitalized on September 15, 2019, the Landlord changed the locks to the rental unit and removed the Tenants' belongings from the rental unit. The Tenant stated that they have not been back to the rental unit since September 15, 2019 and that it has been rented to other tenants.

The Tenant submitted a written statement dated September 27, 2019 which outlines the events that occurred on September 15, 2019.

Analysis

The Tenant stated that they were served with a One Month Notice on August 21, 2019. As the Tenants applied for dispute resolution on August 26, 2019, I find that they applied within the 10 days allowable under Section 47(4) of the *Act*. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy the onus is on the landlord to prove, on a balance of probabilities, that the notice is valid. In the absence of the Landlord, I am not satisfied that the One Month Notice served to the Tenants on August 21, 2019 is valid. It is up to the Landlord to submit a copy of the notice to end tenancy and to provide testimony and evidence to establish that the reasons for the notice are valid. Therefore, the One Month Notice is cancelled.

As the tenancy has ended, I cannot order that the tenancy continues and cannot provide an Order of Possession to the Tenants given that new tenants may be in the rental unit. I also note that as stated by rule 6.2 of the *Rules of Procedure*, the hearing is limited to the claims on the Application for Dispute Resolution.

However, the Tenants are at liberty to file a new Application for Dispute Resolution should there be any outstanding claims remaining from this tenancy. Should the tenancy have ended in the manner testified to by the Tenant, the Landlord was in breach of the *Act* and the Tenants may be entitled to monetary compensation or other remedies under the *Act*.

As the One Month Notice has been cancelled, pursuant to Section 72 of the *Act* I award the Tenants the recovery of the filing fee in the amount of \$100.00.

Conclusion

Although the tenancy has already ended, the One Month Notice in dispute is cancelled.

Pursuant to Section 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$100.00** for the recovery of the filing fee. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 28, 2019

Residential Tenancy Branch