



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAN KEI ENTERPRISES and
[tenant name suppressed to protect privacy]

CORRECTED DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on September 24, 2019 (the "Notice") as well as recovery of the filing fee.

The matter was set for hearing by telephone conference call at 11:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Tenant and his advocate M.B.

The Landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant, his Advocate, and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package.

The Tenant's Advocate testified that she served the Landlord with the Notice of Hearing and the Application on September 27, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of October 2, 2019 and I proceeded with the hearing in their absence.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As I have found the Landlord was served with Notice of this hearing, I proceeded in their absence.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Analysis and Conclusion

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

The Landlord failed to call into the hearing to provide evidence and submissions in support of the Notice; consequently I find the Landlord has failed to meet the burden of proving the reasons for ending the tenancy. As such, I grant the Tenant's request to

cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Tenant has been successful in his Application; I therefore grant him authority to withhold \$100.00 from his next month's rent as recovery of the filing fee pursuant to section 72 of the *Act*.

The Tenant's Advocate stated that this is the third 1 Month Notice to End Tenancy for Cause that the Tenant has received ~~in a year~~ since his tenancy began. The first was resolved by the Tenant agreeing to move to another unit in the building at a higher rent. The second resulted in a hearing where the Landlord also failed to attend (the file number for that matter is included on the unpublished cover page of this my Decision). The Landlord is cautioned that issuing repeated notices to end tenancy may result in a breach of the Tenant's right to quiet enjoyment of the rental unit.

This decision is final and binding on the parties, except as 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: December 2, 2019

Corrected: December 3, 2019

Residential Tenancy Branch