



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 9:41 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenants were given a full opportunity to be heard, to present affirmed 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 tenants and I were the only ones who had called into this teleconference.

The tenants provided sworn, undisputed testimony that the landlord's agent DS was personally served with the tenants' application for dispute resolution and evidence package on December 10, 2019. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenants' application and evidence for this hearing. The landlord did not submit any written evidence for this hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 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.

The tenants confirmed receipt of the landlord's 1 Month Notice dated November 15, 2019. Accordingly, I find the tenants duly served with the landlord's 1 Month Notice.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recovery of his filing fee for this application from the landlord?

Background and Evidence

The tenants provided the following undisputed testimony as the landlord did not attend.

The tenants testified that the landlord has been in communication with the tenants to resolve this matter. The tenants request the cancellation of the 1 Month Notice as well as recovery of the filing fee.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenants received the 1 Month Notice on November 15, 2019 and filed their application on November 24, 2019. Therefore, the tenants are within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord has not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenants' application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for this application.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice dated November 15, 2019 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, 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: February 3, 2020

Residential Tenancy Branch