



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On February 20, 2020, the Tenant submitted an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) dated on December 31, 2019, for more time to dispute the Notice, and to recover the filing fee for this application. The matter was set for a conference call.

The Tenant attended the hearing. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that the Application for Dispute Resolution and Notice of Hearing documents had been served on the Landlord, by Canada Post Registered mail, sent on February 20, 2020, a Canada post tracking number was provided as evidence of service. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant appeared gave testimony and was provided with the opportunity to present his evidence orally and in written, documentary form, and make submissions at the hearing.

Issues to be Decided

- Should the Notice dated December 31, 2019, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of his filing fee for this hearing?

Background and Evidence

The tenancy agreement shows that the tenancy began on March 9, 2019, as a one-year fixed term tenancy that rolled into a month to month after the first year. Rent in the amount of \$2,000.00 is to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$1,000.00 security deposit and a \$500.00 pet damage deposit. The Tenant provided a copy of the tenancy agreement into documentary evidence.

The Notice was served on the Tenant on December 31, 2019 indicating that the Tenant is required to vacate the rental unit on January 31, 2020.

The reason stated in the Notice was that the tenant has:

- *Rental unit/site must be vacated to comply with a government order;*

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

This matter was set for hearing by telephone conference call at 9:30 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.

Since the Landlord did not attend the hearing by 9:41 a.m. to present any evidence or submission in support of the Notice, and as the burden is on the Landlord to prove the Notice was issued for the reasons stated. I find that the Landlord has failed to show cause to end the tenancy.

Therefore, I grant the Tenant's application to cancel the Notice issued on December 31, 2019, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Additionally, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is allowed to take a one-time deduction of \$100.00, from their next month's rent.

Conclusion

The Tenant's application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: April 20, 2020

Residential Tenancy Branch