



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, PSF, FFT

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), an order restricting or setting conditions on the Landlord’s right to enter the rental unit, an order for the Landlord to provide services or facilities required by the tenancy agreement or law, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord R.M. (the “Landlord”), both of whom provided affirmed testimony. At the outset of the hearing the parties agreed that the property in which the rental unit is located has been sold and that a new owner/landlord will be taking over the property part way through May, 2020. As a result, the Landlord has withdrawn the One Month Notice and the parties agreed that the matters relating to the Landlords right to enter the rental unit and the restriction of services and facilities are resolved. The Tenant therefore withdrew their claims relating to Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), an order restricting or setting conditions on the Landlord’s right to enter the rental unit, and an order for the Landlord to provide services or facilities required by the tenancy agreement or law.

However, the Tenant still sought recovery of their filing fee as they believe that the One Month Notice was not valid and the only reason that the hearing has not proceed on the other matters is that the property has been sold and the Landlord will no longer be dealing with their tenancy soon. The Tenant also believes that the One Month Notice was served in bad faith and that the Landlord should have served a Two Month Notice to End Tenancy for Landlord’s Use of Property. As a result, the Tenant believes they are entitled to the recovery of their filing fee as the One Month Notice should never have been issued and it should therefore not have been necessary for them to dispute it.

The Landlord disagreed, stating that the One Month Notice was valid and was not served in bad faith. The Landlord also stated that there was no need for the Tenant to have filed the Application as they simply wanted the Tenant to comply with their requests to move boxes, recycling, and debris, and had the Tenant complied at any

point during their numerous requests, there would have been no need for the One Month Notice or the One Month Notice could have been cancelled without the need for the Tenant to file their Application.

Section 72 of the *Act* states that I may order repayment of a fee under section 59 (2) (c) [*starting proceedings*] by one party to a dispute resolution proceeding to another party. As the hearing did not proceed on the substantive issues for which the Tenant's Application was filed, I do not find that the Tenant is entitled to the recovery of the entire \$100.00 filing fee. However, as the Landlord waited until after the Tenant had filed their Application and paid the filing fee to withdraw the One Month Notice, and the parties agreed that the other matters have been withdrawn not because they have been resolved, but rather because the property has been sold, I find that the Tenant is therefore entitled to the recovery of 50% of their filing fee. The Tenant may deduct the \$50.00 from the rent due on May 1, 2020, or otherwise recover this amount from the Landlords.

Conclusion

The Tenant's claims for cancellation of the One Month Notice, an order restricting or setting conditions on the Landlord's right to enter the rental unit, and an order for the Landlord to provide services or facilities required by the tenancy agreement or law are withdrawn. The Tenant has leave to reapply for these claims. This is not an extension of any statutory time limit.

The Tenant is entitled to deduct \$50.00 from the rent due on May 1, 2020, or to otherwise recover this amount from the Landlords, for recovery of 50% of the filing fee.

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 22, 2020

Residential Tenancy Branch