



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On July 3, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with S.M. attending as an advocate for the Tenant. The Landlord did not attend the 33-minute teleconference hearing. All in attendance provided a solemn affirmation.

The Tenant advised that his previous advocate served the Landlord with the Notice of Hearing package by registered mail on or around July 7, 2020 (the registered mail tracking number is listed on the first page of this decision). The registered mail tracking history indicated that this package was delivered on July 10, 2020. Based on this solemnly affirmed testimony and the evidence provided, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that the tenancy started on March 15, 2020, that rent was currently established at \$2,500.00 per month, and that it was due on the thirtieth day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He advised that he was “not sure” when he was served the Notice. However, when the date of service on the Notice was mentioned, he believed he was likely served the Notice on or around June 26, 2020, as per the date the Notice was signed. A copy of this Notice was submitted as documentary evidence.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I find it important to note that the burden of proof is on the Landlord to substantiate the reasons for ending the tenancy. As the Landlord did not attend the hearing or provide evidence to justify why the Notice was served, I am not satisfied that the Landlord has established any grounds to substantiate service of the Notice. Therefore, I find that the Notice is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of

Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause, in relation to this Application, of June 26, 2020 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: August 5, 2020

Residential Tenancy Branch