



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 05, 2020 (the “Application”). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 30, 2020 (the “Notice”). The Tenants also sought to recover the filing fee.

Tenants M.J., Y.S. and A.S. appeared at the hearing and appeared for Tenant S.S. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. The Tenants provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenants’ evidence.

The Tenant testified that the hearing package and evidence were sent to the Landlord at the address on the Notice by registered mail on October 09, 2020. The Tenant provided Tracking Number 1 for this package. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered October 13, 2020.

Based on the undisputed testimony of the Tenant, Notice and Canada Post website information, I am satisfied the hearing package and evidence were served on the Landlord in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I am satisfied the Landlord received the hearing package and evidence October 13, 2020, in sufficient time to prepare for, and appear at, the hearing. I also find the Tenants complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

As I was satisfied of service of the hearing package and evidence, I proceeded with the hearing in the absence of the Landlord.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Notice was submitted as evidence. There are no grounds checked off on page two of the Notice.

The Tenant confirmed receipt of the Notice September 30, 2020 by email.

The Application was filed October 05, 2020.

The teleconference started at 11:00 a.m. and ended at 11:14 a.m. Nobody appeared for the Landlord during this time.

Analysis

The Notice was issued pursuant to section 49 or 49.1 of the *Act*. There are no grounds checked off on the Notice and therefore I cannot determine which specific section the Notice was issued under.

Regardless of which ground on the Notice applied, the Tenants had 15 days to dispute the Notice pursuant to sections 49(8)(a) or 49.1(5) of the *Act*.

I am satisfied based on the undisputed testimony of the Tenant that the Notice was received September 30, 2020 by email. This email is also in evidence. The Application was filed October 05, 2020, within the 15-day time limit.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice.

Here, the Landlord did not appear at the hearing to provide evidence to prove the grounds for the Notice. Nor did the Landlord submit evidence to prove the grounds for

the Notice. In the absence of evidence from the Landlord, the Landlord has failed to prove the grounds for the Notice. Therefore, the Notice is cancelled.

I also note that the Notice does not comply with section 52 of the *Act* as it does not state the grounds for the Notice. I would have cancelled the Notice on this basis as well.

The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful, the Tenants are awarded \$100.00 as recovery of the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from one future rent payment.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. The Tenants can deduct \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 14, 2020

Residential Tenancy Branch