



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 tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated September 30, 2020 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his father owned the rental unit and he had permission to speak on behalf of the owner at this hearing. The tenant confirmed that her advocate had permission to speak on her behalf. This hearing lasted approximately 19 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Both parties confirmed that they were ready to proceed with this hearing.

The tenant was in receipt of the landlord's 1 Month Notice. A copy of the notice was provided for this hearing. The 1 Month Notice indicates an effective move-out date of November 1, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

Preliminary Issue – *Res Judicata*

Both parties agreed to the following facts. Both parties attended a “previous hearing” at the Residential Tenancy Branch (“RTB”) after which a decision, dated September 3, 2020 (“previous decision”) was issued by a different Arbitrator. The file numbers for that previous hearing appear on the front page of this decision. The landlord’s 1 Month Notice, dated July 16, 2020 (“first notice”) was cancelled because an incident between both parties’ children was determined to be a Court issue, rather than an RTB matter. There was also a note made by the Arbitrator, at the end of the five-page decision, that the landlord did not sign a copy of that first notice.

The landlord seeks an order of possession based on the current 1 Month Notice. The tenant seeks to cancel this notice and to recover the \$100.00 application filing fee. The landlord stated that he issued the 1 Month Notice to the tenant for the same reason as the first notice, the issue between the children. He said that the tenant made comments to him after that decision was made. He claimed that he also signed a copy of the 1 Month Notice.

I notified both parties that I could not rehear the previous application because it was already decided, so it was *res judicata*. I informed them that the previous decision was legal, final and binding. Both parties had a chance to review that decision at the RTB under section 79 of the *Act*, and potentially obtain a new hearing in order to reargue that application. However, that did not occur and the time for that has now passed. Regardless of whether the landlord signed a copy of the current 1 Month Notice, it was issued for the same reason as the first notice. The merits of the first notice were already decided and the notice was cancelled based on the content and the merits, not solely based on the lack of a signature.

The 1 Month Notice issue is *res judicata*, meaning it has already been decided at the previous hearing. The tenant’s application to cancel the landlord’s 1 Month Notice is allowed. The landlord is not entitled to an order of possession based on the 1 Month Notice. The landlord’s 1 Month Notice, dated September 30, 2020, is cancelled and of no force or effect. This tenancy continues under the terms of the original tenancy agreement until it is ended in accordance with the *Act*. I notified both parties of my decision during the hearing.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The 1 Month Notice issue is *res judicata*, since it has already been decided in a previous hearing decision.

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord is not entitled to an order of possession based on the 1 Month Notice. The landlord's 1 Month Notice, dated September 30, 2020, is cancelled and of no force or effect. This tenancy continues under the terms of the original tenancy agreement until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 on a one-time basis, from future monthly rent owed to the landlord for this rental unit and this tenancy, in full satisfaction of the monetary award for 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: December 17, 2020

Residential Tenancy Branch