



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 9, 2020, wherein the Tenant sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on October 29, 2020 (the "Notice") as well as recovery of the filing fee.

The 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 16 minutes and the only participant who called into the hearing during this time was the Tenant.

The Landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:46 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on November 20, 2020 by registered mail. A copy of the registered mail tracking number was provided in evidence before me and is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of November 25, 2020.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I find the Landlord was duly served with notice of this hearing and pursuant to *Rules 7.1* and *7.3*, I proceeded with the hearing in her absence.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Analysis and Conclusion

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

As the Landlord failed to call into the hearing to provide evidence and submissions in support of the Notice, I find the Landlord has failed to meet the burden of proving the reasons for ending the tenancy. As such, I grant the Tenant's request to cancel the

Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Tenant testified that she had been in discussions with the Landlord about the tenancy continuing as recently as January 2021. While this may explain why the Landlord did not call into the hearing, a Tenant who receives a notice to end tenancy must apply to dispute the Notice, failing which they are conclusively presumed to accept the end of the tenancy. As such, and although the parties may have reached an agreement, without a written agreement the Tenant would have been significantly prejudiced had she not called into this hearing.

The Tenant has been successful in her Application to dispute the Notice. I therefore grant her authority to withhold \$100.00 from her next month's rent as recovery of the filing fee pursuant to section 72 of the *Act*.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 02, 2021

Residential Tenancy Branch