



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, RR, OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 am. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. They were assisted by an advocate ("**OH**"). 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 tenants, OH, and I were the only ones who had called into this teleconference.

The tenants testified that they personally served an agent of landlord with the notice of dispute resolution proceeding form and supporting evidence package on January 1 or 2, 2021. They testified that the rental unit is located in a motel (I note that the parties have signed a Residential Tenancy Agreement, the terms of which would seem to give rise to residential tenancy), and that they served the duty manager with this package at the motel's front desk. I find that, per section 89 of the Act, the landlord has been served with this package in accordance with the Act.

The tenants amended their application on March 3, 2021, adding the application for rent reduction and an order that the landlord comply with the Act. Tenant WT testified he

emailed the amendment to the landlord. In note that, on March 1, 2021, service by email became permissible (as per section 43 of the *Residential Tenancy Regulations*). However, in order for this to be an accepted mode of service, the email address would have had to have been provided by the landlord explicitly as “an address for service”. In the present circumstance, I have no evidence before me to indicate that this was the case.

Accordingly, I find that the tenants have not served the landlord with their amendment in accordance with the Act or the Regulations. As such, I dismiss their applications for a rent reduction and an order that the landlord comply with the Act, with leave to reapply.

Preliminary Issue – Effect of the Landlord’s Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, despite the fact that this is the tenant’s application to cancel the Notice, the landlord bears the evidentiary burden to prove that the Notice was issued validly. As the landlord has failed to attend this hearing, I find that he has failed to discharge his onus, as he has not provided any evidence supporting the Notice’s validity.

Accordingly, I order that the Notice is cancelled.

Pursuant to section 72(1) and (2) of the Act, as the tenants have been partially successful in the application, they may deduct \$100 from one future month’s rent in satisfaction of their application to recover the filing fee from the landlord

Conclusion

The tenant's applications for a rent reduction and an order to comply with the Act is dismissed, with leave to reapply.

The Notice is cancelled and of no force or effect. The tenancy shall continue.

I order the tenants to serve the landlord with a copy of this decision within three of days of receipt.

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: March 19, 2021

Residential Tenancy Branch