



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* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant and his advocate attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenant with the assistance of his advocate stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 18, 2021. The tenant stated that he had received verbal confirmation from the landlord that the package had been received. I accept the undisputed affirmed evidence of the tenant and find that the landlord was sufficiently served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. Despite not attending the hearing the landlord is deemed served as per section 90 of the Act.

At the outset, the tenant stated that despite applying for recovery of the \$100.00 filing fee, he wished to waive recovery of that fee. On this basis, the tenant's application for recovery of the filing fee requires no further action.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

On January 29, 2021, the landlord served the tenant with the 1 Month Notice dated January 29, 2021 in person. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2021 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/ site or property/park.

The details of cause state:

Condition inspection on Jan 14th/21

Bathroom mirror ripped off the wall

Toilet seat ripped off and thrown in the bathtub

Dining room lino ripped off the floor

Kitchen cupboard doors damaged

A hole kicked in the living room wall

The whole apartment very dirty

[reproduced as written]

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, the landlord has failed to attend, submit evidence or make any submissions regarding the tenant's application to cancel the 1 month notice dated January 29, 2021. I find that the landlord has failed to prove on a balance of probabilities the reasons for cause set out in the 1 month notice. Despite the tenant confirming that he was served with the 1 month notice dated January 29, 2021, the 1 month notice is set aside and cancelled. The tenancy shall continue.

Conclusion

The tenant's application to cancel the 1 month notice dated January 29, 2021 is granted.

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: May 10, 2021

Residential Tenancy Branch