



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALS PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, OLC, FFT

Introduction

On March 5, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-Day Notice to End Tenancy, to cancel a One Month Notice to End Tenancy, to request an order for the Landlord to comply with the Act, and to claim reimbursement for the filing fee. The matter was set for a participatory hearing via conference call.

The Tenant attended the conference call hearing; however, the Landlord did not attend at any time during the 16-minute hearing. The Tenant testified that they served the Landlord with the Notice of Dispute Resolution Proceeding by sending it to their place of business via registered mail on March 15, 2021. The Tenant provided a tracking number (as noted on face page of this Decision) and stated that a Canada Post notice card had been left with the Landlord, but they did not go to pick up the package. The Tenant stated that he does some work for the Landlord and had conversations with the Landlord’s agent about the upcoming hearing, but is unsure as to why no one showed up. I find that the Landlord has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a 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.

As the Landlord did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the testimony and evidence as presented by the Tenant.

Preliminary Matter - Issues

The Tenant clarified that he was only served with a One Month Notice to End Tenancy for Cause, dated February 26, 2021. The Tenant confirmed that there was no need to proceed with the issue, as applied for, to cancel a 10 Day Notice to End Tenancy.

I determined that the issue related to the request for the Landlord to comply with the Act was not related to the main issue in the dispute and was severed as per *Rules of Procedure 2.3 - Related Issues*.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause, dated February 26, 2021 (the "One Month Notice") be cancelled, in accordance with section 47 of the Act?

If the One Month Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

The Tenant testified that the tenancy began on May 1, 2006. The monthly rent is \$765.00, and the Landlord collected a security deposit in the amount of \$370.00.

The Tenant submitted that he received the One Month Notice on February 26, 2021. The reasons for the end of the tenancy were noted as late rent and because of damage to a common area that was allegedly caused by the Tenant's guest.

The Tenant stated he was in conversation with the Landlord about payment for the damage and was attempting to have the Landlord provide some sort of evidence as to who caused the damage.

The Tenant stated that he submitted post-dated cheques to the Landlord, and it is the Landlord who submits the rent late, not the Tenant.

Analysis

Section 47 of the Act states that a Tenant may dispute a Notice to End Tenancy by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. In this case, I find that the Tenant applied for dispute resolution on March 5, 2021, within 10 days of receiving the One Month Notice.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a term of the tenancy agreement or the Act, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. In this case, I find that the Landlord bears the burden of proof in regard to the validity of the One Month Notice.

Based on the Tenant's evidence and the fact that the Landlord did not attend this hearing to provide testimony or evidence to support the validity of the One Month Notice, I cancel the One Month Notice.

I find that the Tenant's Application has merit and that the Tenant is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

As compensation for the filing fee, I authorize the Tenant to deduct \$100.00 from a future rent payment to the Landlord, in accordance with section 72 of the Act.

Conclusion

The One Month Notice, dated February 26, 2021, is cancelled. I order that this tenancy continue until ended in accordance with the Act.

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: June 14, 2021

Residential Tenancy Branch