



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: OPC, MNDCL-S, FFL
 TT: CNC, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlords’ Application for Dispute Resolution was made on March 30, 2021 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for cause;
- a monetary order for damage or compensation;
- an order to retain the security deposit; and
- an order granting the recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on April 1, 2021 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice for Cause; and
- an order granting the recovery of the filing fee.

The hearing was scheduled for 9:30am on July 16, 2021 as a teleconference hearing. Only the Tenant, and the Tenant’s Advocate H.C. attended the hearing at the appointed date and time. No one called in for the Landlords. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notices of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant, H.C., and I were the only persons who had called into this teleconference.

Rule 7.3 of the Rules of Procedure states that if a party does not attend the hearing, the hearing may proceed without that party or the application may be dismissed with or without leave to reapply. I note that the Landlords had also made an Application which was crossed with the Tenant's Application. As such, I find that the Landlords would have been aware of the hearing as they had the same hearing date and time provided in their Notice of Hearing. As no one called into the hearing for the Landlords, I dismiss the Landlords' Application in its entirety without leave to reapply.

The hearing continued based on the Tenant's Application. The Tenant stated that they served their hearing package to the Landlord by Xpresspost with tracking on April 6, 2021. The Tenant provided the Xpresspost receipt in support. Based on the oral and written submissions of the Tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlords are deemed to have been served with the Application on April 11, 2021 the fifth day after their registered mailing. The Tenant stated that they served their documentary evidence to the Landlords by registered mail on June 25, 2021. The Tenant provided the receipt in support. Based on the oral and written submissions of the Tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlords are deemed to have been served with the Tenant's documentary evidence on June 30, 2021 the fifth day after the registered mailing.

The Tenant and H.C. were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling One Month Notice to End Tenancy for Cause dated March 29, 2021 (the "One Month Notice"), pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Tenant testified to the following; the tenancy started on September 1, 2016. Currently, the Tenant is in a fixed term tenancy which commenced on September 1, 2020 until October 1, 2021. Currently, the Tenant is required to pay rent in the amount

of \$2,560.00 which is due to be paid to the Landlords on the first day of each month. The Tenant paid a security deposit and a pet damage deposit, each in the amount of \$1,250.00 which the Landlords continue to hold. The Tenant continues to occupy the rental unit.

The Tenant stated that they received the One Month Notice served in person on March 29, 2021. The Tenant confirmed that the One Month Notice is dated March 29, 2021 and has an effective date of April 30, 2021. The Tenant provided a copy of the One Month Notice in support. The Tenant stated they applied to cancel the One Month Notice on April 1, 2021 as they disagree with the details of cause provided by the Landlord.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47(4) of the *Act* provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. After receiving the One Month Notice on March 29, 2021, the Tenant applied to dispute the One Month Notice on April 1, 2021. I find that the Tenant filed their Application within the timeframe permitted under the *Act*.

According to Section 47(1) of the *Act*, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlords have the onus of proof to prove that the One Month Notice is valid. I find that the Landlords had applied for an Order of Possession in relation to the One Month Notice, therefore, they would have knowledge of the hearing date and time. Furthermore, I find that the Landlords were properly served with the Tenant's Notice of Hearing and failed to attend the hearing to prove the allegation within the Notice.

In light of the above, I cancel the One Month Notice, dated March 29, 2021. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with their Application, I find that they are entitled to the return of the \$100.00 filing fee paid to make the Application. I order that the Tenant deduct \$100.00 from one (1) future rent payment pursuant to Section 72 of the *Act*.

Conclusion

No one attended the hearing for the Landlords. As such, their Application is dismissed without leave to reapply.

The Tenant's Application is successful. The One Month Notice issued by the Landlords dated March 29, 2021 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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: July 16, 2021

Residential Tenancy Branch