



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, FFT

Introduction

On April 23, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) issued February 2, 2021, for more time to dispute the Notice, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, their support person, and their Advocate (the “Landlord”), as well the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

Issues to be Decided

- Is the Tenant entitled to more time to file to cancel the Notice?
- Should the Notice dated February 2, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

While I have reviewed all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that they had not been served with a Two Month Notice to End Tenancy for the Landlord's Use of the Property.

The Landlord testified that they had not served the Tenant with a Two Month Notice to End Tenancy for the Landlord's Use of the Property.

Both parties agreed that the Landlord had severed the Tenant with a One Month Notice to end Tenancy for Cause on February 2, 2021.

The Tenant was asked if they had made an error in their application and had intended to file to cancel the One Month Notice to end Tenancy for Cause. The Tenant agreed that they might have made an error in their application.

The Landlord confirmed that they had filed a separate application to enforce their One Month Notice to end Tenancy for Cause, which is scheduled for a hearing on November 4, 2021.

The option to hear the matter related to the One Month Notice to end Tenancy for Cause, issued on February 2, 2021, was made during the hearing; the Tenant testified that they were not prepared to proceed on the One Month Notice to end Tenancy for Cause during today's proceedings.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities:

I find that the Landlord has not issued a Two Month Notice to End Tenancy for the Landlord's Use of the Property to this tenant. This tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was not successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

Conclusion

I dismiss the Tenant's application in its entirety.

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: August 3, 2021

Residential Tenancy Branch