



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Associated Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenant testified that they were served with a copy of the 1 Month Notice dated May 31, 2021 when it was hand delivered to their spouse who resides at the rental unit. The tenant testified that they served the landlord with their notice of application and evidence by personally delivering it to the business address of the landlord on or about June 24, 2021.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. The tenant was served with the 1 Month Notice when a copy was left with their spouse who resides at the rental unit. The tenant was uncertain the date that the Notice was served.

The tenant filed their application for dispute resolution on June 11, 2021. A Notice of Dispute was provided by the Branch on June 24, 2021. The tenant testified that they served the landlord with the Notice of Dispute on or about June 24, 2021 by hand delivering to the service address provided on the 1 Month Notice and leaving a copy with an agent of the landlord.

Analysis

Section 89(1)(b) provides that an application for dispute resolution may be served by leaving a copy with an agent of the landlord.

In the present case the tenant provided cogent testimony detailing the address they attended, the approximate date of service and that they left a copy of their Notice of Dispute with an employee of the corporate landlord who confirmed they were an agent of the landlord. While the tenant did not provide documentary materials in support of their submissions I find their undisputed and consistent testimony to be sufficient to meet their evidentiary burden on a balance of probabilities to establish that they have served the landlord in accordance with the *Act*.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice.

In the matter at hand the tenant acknowledged receipt of the 1 Month Notice dated May 31, 2021 but was uncertain what date it was served on them. In the absence of evidence as to the date on which the 1 Month Notice was served on the tenant, I find that the tenant was within the statutory time limit to file an application to dispute the 1 Month Notice on June 11, 2021.

Because the landlord did not attend the hearing I find the landlord has failed to satisfy the burden of proof to show the grounds for the 1 Month Notice and I therefore allow the tenant's application to cancel the 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues 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: October 5, 2021

Residential Tenancy Branch