



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WYNN REAL ESTATE LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order for reimbursement of the filing fee pursuant to section 72.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant testified as follows. On August 12, 2021, they sent the landlord the Application for Dispute Resolution and Notice of Hearing by email. The email address was the landlord’s email address used by the landlord throughout the tenancy in communication with the tenant. The landlord acknowledged receipt of the tenant’s documents in a later email. The landlord subsequently sent the tenant a new lease agreement which the tenant signed and returned to the landlord. The tenant stated that

based on the landlord's response to their application, they have no plans to leave the unit and believe all issues between the parties have been resolved.

I accept the uncontradicted affirmed testimony of the tenant and find as follows. The tenant sent the Notice of Hearing and Application for Dispute Resolution by email to the landlord at the usual email address used by the landlord in communication with the tenant. The landlord acknowledged receipt by email sent to the tenant. The landlord subsequently submitted a new tenancy agreement to the tenant which has been signed. The tenancy has continued.

In view of the testimony, my findings, and the Act, although not served in accordance with section 89 of the Act, I find that the Notice of Hearing and Application for Dispute Resolution was sufficiently served pursuant to section 71(2)(c) of the Act.

Preliminary Issue

Section 55 of the Act requires that when a tenant applies for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually, the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's One Month Notice, the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the Act and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the Notice to End Tenancy is granted. I order that the tenancy shall continue until ended in accordance with the agreement and the Act.

As the tenant has been successful in this Application, I grant the tenant an award for reimbursement of the filing fee of \$100.00 which the tenant may deduct from rent on a one-time basis.

Conclusion

I order that the tenant's application to cancel the One Month Notice to End Tenancy dated is granted. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*. The remainder of the tenant's claims as withdrawn as dismissed without leave to reapply.

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: November 29, 2021

Residential Tenancy Branch