



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Advocate, and the landlord also attended. Both parties gave affirmed testimony and were given the opportunity to question each other.

The hearing took place over a period of more than an hour, and well into the hearing the landlord advised that he had not received any of the tenant's evidentiary material. The landlord also testified that he had uploaded evidentiary material, however the system does not allow a party to view evidence that has been uploaded to ensure it has been done correctly. I agree that is an unfortunate feature of the system, but I have no evidence from the landlord. The tenant testified he had not received any evidence from the landlord and that he provided all evidence to the landlord with the Hearing Package by registered mail.

Any evidence that a party wishes to rely on must be provided to the other party, and I am not satisfied that either party has complied.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. The landlord was displeased that I would not consider the copy of the One Month Notice to End Tenancy for Cause that was provided as evidence by the tenant. However, the landlord has insisted that he has not received any of the tenant's evidence, and therefore would have no idea what is before me.

Since the landlord has not provided any evidence, and has not established that any notice given was in the approved form, I cancel the Notice and the tenancy continues.

Generally, where an applicant is successful with an application, the applicant is entitled to recovery of the \$100.00 filing fee. In this case, having found that neither party has satisfied me that any evidence was exchanged, and I have cancelled the Notice as a result of such failure, I decline to order that the tenant recover the filing fee from the landlord.

The landlord indicated at the end of the hearing that he would be appealing my decision to the Supreme Court of Canada, and I advised that it is well within his right to do so.

Conclusion

For the reasons set out above, the notice to end the tenancy is hereby cancelled and the tenancy continues.

The tenant's application for recovery of the filing fee from the landlord is hereby dismissed.

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 26, 2021

Residential Tenancy Branch