



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding W&Y Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenants for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord did not attend the hearing. I accept the Tenants’ evidence that the Landlord was served with the application for dispute resolution, notice of hearing and evidence (the “Package”) by registered mail on August 19, 2021 in accordance with Section 89 of the Act. The Tenants state that the postal tracking information for this mail indicates that the Landlord collected the mail on August 23, 2021. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord received the Package at the earliest on August 23, 2021 and at the latest is deemed to have received the Package on August 24, 2021. The Tenants were given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started in 2020. Rent of \$895.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$447.50 and a pet deposit of \$447.50. On July 26, 2021 the Tenants found a one month notice to end tenancy for cause dated August 20, 2021 (the "Notice") on their door. The reason stated on the Notice is that the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The details on the Notice note a blocked fire exit and the use of the balcony for storage. The Tenants state that the fire exit referred to is their balcony and that they have not blocked the exit from the balcony. The Tenants state that they have had two firefighters inform them that there was no problem with the balcony.

Analysis

Section 47(1)(d)(iii) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Based on the undisputed evidence of the Tenants, I find that the Notice is not valid for its stated reason and that the Tenants are entitled to the cancellation of the Notice. The tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 07, 2021

Residential Tenancy Branch