



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI Goddard & Smith
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated December 9, 2021 ("One Month Notice").

The Tenant and an advocate for the Tenant, M.D. ("Advocate"), appeared at the teleconference hearing, but no one attended on behalf of the Landlord. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenant and his Advocate, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenant and his Advocate.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on December 21, 2021. The Tenant provided a Canada Post tracking number as evidence of service. I checked for the delivery of this package in the Canada Post website, and I learned and find that it was delivered to the

Landlord on December 22, 2021. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

I asked the Tenant for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the One Month Notice. The Tenant confirmed the name of the property management company representing the owner, so I have amended the respondent's name in the Application in this regard, pursuant to section 64 (3) (c) and Rule 4.2.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires that I consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the tenant's application, and if the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act as to form and content.

Rule 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities. The onus to prove their case is on the person making the claim. In most cases, this is the person applying for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As no one attended on behalf of the Landlord to present the merits of the One Month Notice, I find that the One Month Notice must be cancelled. Pursuant to section 62 of the Act, I cancel the One Month Notice and find that it is of no force or effect. I find that the tenancy, therefore, continues until ended in accordance with the Act.

Conclusion

The Tenant is successful in his Application to cancel the One Month Notice, as the Landlord failed to attend the hearing to present the merits of the One Month Notice. Accordingly, the One Month Notice is cancelled and is of no force or effect.

The tenancy continues until ended in accordance with the Act.

The Tenant provided his Advocate's email address in the Application and the Advocate confirmed this in the hearing. They had no email address for the property manager; therefore, it will be mailed to the Landlord at the address provided in the Application.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 13, 2022

Residential Tenancy Branch