



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNE, RRP, FFT

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- An order under s. 46 to cancel a 10-Day Notice to End Tenancy;
- An order under s. 48 to cancel a One-Month Notice to End Tenancy for End of Employment;
- An order under s. 65 for return of the Tenant’s personal property; and
- Return of the Tenant’s filing fee pursuant to s. 72.

A.W. appeared on his own behalf as Tenant. The Landlord did not attend, nor did someone attend on their behalf.

A.W. affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, which prohibits parties from recording the proceedings. A.W. confirmed he was not recording the proceedings.

The hearing began as scheduled pursuant to Rule 7.1 of the Rules of Procedure. I confirmed the correct dial-in information was listed in the Notice of Dispute Resolution. As the Landlord failed to attend the hearing, the hearing was concluded without their participation at 11:17 AM as provided for under Rule 7.3 of the Rules of Procedure.

The Tenant acknowledges that he received a 10-Day Notice to End Tenancy dated August 27, 2021 (the “10-Day Notice”) and a One-Month Notice to End Tenancy for Cause dated August 26, 2021 (the “One-Month Notice”) on September 14, 2021.

The Tenant further advised that he served the Landlord with the Notice of Dispute Resolution by way of registered mail sent on September 21, 2021. The Tenant provides a copy of the tracking number confirming that it was signed for on September 27, 2021.

I find that the Notice of Dispute Resolution was served on the Landlord in accordance with s. 89 of the *Act*.

The Tenant confirmed that he served no evidence on the Landlord.

The Tenant advised that the Landlord has since changed and that he received notice of the new Landlord on January 6, 2022. The Tenant confirmed that he did not serve the new Landlord of his application materials. However, the Tenant did acknowledge receipt of the Landlord's evidence package approximately 10 days before the hearing. I find that pursuant to s. 71(2) of the *Act* the new Landlord was sufficiently served with the Notice of Dispute Resolution. The new Landlord clearly had notice of the hearing and served responding evidence on the Tenant within the applicable timelines.

Preliminary Issue – Amendment to the Tenant's Claim

The Tenant did not provide documentary evidence but described the One-Month Notice and detailed the cause the Landlord cites for ending the tenancy, describing it as form RTB-33. The Tenant's application was filed as disputing a One-Month Notice to End Tenancy for End of Employment pursuant to s. 48. The Tenant confirmed he was not employed with the Landlord and that he wished to dispute the One-Month Notice.

I find that the Tenant made an error in his application such that he noted that the notice to end tenancy he wished to dispute was for the end of employment, rather than notice for cause. I note that RTB-33 is used for both types of notices and that the top of the form lists notice for cause or end of employment. I find that this is clerical error and that the Tenant demonstrated his intention to dispute the One-Month Notice. Accordingly, I amend the Tenant's application such that it is to dispute the One-Month Notice pursuant to s. 47.

The Tenant further confirmed that he would withdraw his claim for return of his personal property. The Tenant confirmed that the Landlord had not, in fact, taken his personal property and that he was the victim of theft from a 3rd party for which the Landlord was not responsible. Accordingly, I remove this aspect of the Tenant's claim.

Issue(s) to be Decided

- 1) Whether the One-Month Notice should be cancelled?
- 2) Whether the 10-Day Notice should be cancelled?

3) Is the Tenant entitled to return of his filing fee?

Background and Evidence

The Tenant advised that his tenancy began on October 1, 2019. He further confirmed that he pays rent of \$1,175.00 and a parking fee of \$72.00, for a total payment of \$1,247.00 due on the first day of the month. The Tenant further confirmed that he paid a security deposit of \$587.50 to the Landlord.

As mentioned, the Tenant indicated that he received the 10-Day Notice and the One-Month Notice on September 14, 2021.

The Landlord did not attend the hearing to present their evidence.

Analysis

The Tenant applies to cancel a One-Month Notice and a 10-Day Notice, both of which he indicates were received on September 14, 2021.

As is made clear under Rule 6.6 of the Rules of Procedure, the onus of proving that notices to end tenancy were issued in compliance with the *Act* rests with the Landlord. As the Landlord failed to attend the hearing to present their evidence and make submissions, I find that the Landlord failed to displace their evidentiary burden. Accordingly, the Tenant's application to cancel the 10-Day Notice and the One-Month Notice is granted. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The Landlord did not attend the hearing to prove that the notices to end tenancy were properly issued. As the Landlord failed to discharge their evidentiary burden, the One-Month Notice and the 10-Day Notice are hereby cancelled pursuant to ss. 47 and 46 respectively. The tenancy shall continue until it is ended in accordance with the *Act*.

As the Tenant's application was successful, I find that he is entitled to the return of his filing fee from the Landlord pursuant to s. 72(1) of the *Act*. Pursuant to s. 72(2) of the *Act*, I direct that the Tenant withhold \$100.00 from rent on one occasion in full satisfaction of the filing fee to be paid by the Landlord.

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: February 04, 2022

Residential Tenancy Branch