



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the hearing and was given the opportunity to make submissions as well as present 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 for eleven 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.

1. Preliminary Issue – Service

As the landlord did not attend the hearing, the tenant provided testimony and evidence regarding service.

The tenant testified as follows. On February 3, 2022, they sent the landlord the Application for Dispute Resolution and Notice of Hearing by registered mail thereby effecting service 5 days after mailing, that is, on February 8, 2022. The landlord KC and

landlord's agent submitted evidence for the hearing but failed to attend. In the submitted evidence, they acknowledged receipt of the tenant's application. The tenant submitted copies of the receipt and the tracking number for the mailing.

The tenant stated that they have no plans to leave the unit.

I accept the uncontradicted testimony of the tenant and find as follows. The tenant sent the Notice of Hearing and Application for Dispute Resolution by registered mail to the landlord and effected service under section 90 on February 8, 2022. The landlord submitted documents as evidence for the hearing in which they expressly acknowledged receipt of the tenant's application for dispute.

In view of the testimony, my findings, and the Act, I find the landlord was properly served in compliance with sections 89 and 90 of the Act.

2. Preliminary Issue – Burden of Proof

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 did not attend and did not submit 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*.

I order that the One Month Notice is cancelled and void.

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*.

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: April 26, 2022

Residential Tenancy Branch