



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Tenant applies to cancel a One-Month Notice to End Tenancy signed January 20, 2022 (the “One-Month Notice”) pursuant to s. 47 of the *Residential Tenancy Act* (the “Act”).

G.W. appeared as the Tenant. Her advocate, D.F. appeared, as did J.K., who is the manager for D.F.. J.K. provided no direct submissions during the hearing and appeared as assistant to D.F..

The Landlord did not attend, nor did someone attend on their behalf.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant’s advocate advised that the Notice of Dispute Resolution and the Tenant’s evidence was served on the Landlord by way of registered mail sent on February 9, 2022. The Tenant’s advocate confirmed the address the registered mail had been sent to was the same as that listed for the Landlord in the One-Month Notice. I find that the Tenant has served the Notice of Dispute Resolution and their evidence in accordance with s. 89 of the *Act* by way of registered mail sent on February 9, 2022. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Tenant’s application materials on February 14, 2022.

Landlord's failure to attend the hearing

The Tenant's advocate confirmed that the Tenant received the One-Month Notice on January 20, 2022 by having the notice put under her door. After review of the file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed her application on January 26, 2022, which is within the 10-days permitted to her under s. 47(4) of the *Act*.

Though this is the Tenant's application, the evidentiary burden of proving the One-Month Notice was issued in compliance with the *Act* rests with the Respondent Landlord. This point is made clear in Rule 6.6 of the Rules of Procedure, which states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution at 11:00 AM. As the Landlord failed to attend the hearing and as permitted by Rule 7.3 of the Rules of Procedure, the hearing was concluded at 11:11 AM without submissions from the Landlord.

I find that the Landlord has failed to prove on a balance of probabilities that the One-Month Notice was properly issued. As the Landlord has failed to discharge their evidentiary burden, the One-Month Notice is hereby cancelled and is of no force or effect.

Conclusion

I find that the Landlord failed to prove on a balance of probabilities that the One-Month Notice was properly issued. Accordingly, I grant the Tenant's application and hereby order that the One-Month Notice is cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with 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