



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

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 January 26, 2022 ("One Month Notice"), and to recover the \$100.00 cost of his Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony; however, 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 person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

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 his 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 email on February 10, 2022, and he served them with his evidentiary submissions by registered mail and in person on February 14, 2022. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents and evidence 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 note that the Landlord had submitted evidence to the RTB and the Tenant said he had also received evidence from the Landlord. Still, no one attended the teleconference hearing on the Landlord's behalf.

Rule 6.6 sets out the standard and burden of proof in this administrative hearing. It 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.

As the Landlord or an agent acting on their behalf, failed to attend the hearing to present the merits of the One Month Notice, I find that they have not met their burden of proof on a balance of probabilities.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and he confirmed these addresses in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenant confirmed that the fixed term tenancy began on October 1, 2020, with a monthly rent of \$1,490.00, due on the first day of each month. The Tenant agreed that he paid the Landlord a security deposit of \$745.00, and a pet damage deposit of \$745.00.

The Tenant had submitted a copy of the One Month Notice, which was signed and dated January 26, 2022, and which has the rental unit address, The Tenant confirmed that the One Month Notice was served by attaching a copy to the rental unit door on January 26, 2022, with an effective vacancy date of February 28, 2022. The One Month Notice was served on the grounds that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As noted above, where a tenant applies to cancel an eviction notice, the landlord has the burden of proving that this eviction notice is valid and enforceable. However, no one attended the hearing on behalf of the Landlord to present the merits of the One Month Notice.

As a result, I find that the One Month Notice is not valid or enforceable. I cancel the One Month Notice pursuant to section 62 of the Act. The Tenant is successful in his Application, and as such, I award him recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act. **The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction of this award.**

Conclusion

The Tenant is successful in his Application, as the Landlord failed to attend the hearing to fulfill their burden of proof in presenting the validity of the One Month Notice. The One Month Notice is cancelled and is void and unenforceable. The tenancy continues until ended in accordance with the Act.

Given his success in the Application, the Tenant is awarded recovery of his **\$100.00**

Application filing fee, The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction of this award.

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: May 09, 2022

Residential Tenancy Branch