



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened to deal with the tenant's application (application) for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The tenant applied on February 24, 2022, for an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord.

The tenant attended the hearing on June 6, 2022; however, the landlord did not attend.

As the landlord was not present, service of the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was considered.

The tenant testified that she served her application package to the landlord by registered mail on or about March 23, 2022. The tenant said she did not receive the application package from the Residential Tenancy Branch (RTB) to serve the landlord, until March 23, 2022.

Based on this submission, I find the landlord was served notice of this hearing and the tenant's application in a manner complying with section 89(1) of the Act. The hearing proceeded in the landlord's absence. Additionally, I find support for the tenant's assertion that the landlord was served with her application package as the landlord filed evidence in response to the tenant's application on May 29, 2022, and the tenant testified that the landlord's local agent served her with the landlord's evidence on May 30, 2022.

The tenant was provided the opportunity to present her evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, only the evidence relevant to the issue and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's 1 Month Notice?

Background and Evidence

The landlord filed a copy of the written tenancy agreement showing the tenancy began on May 24, 2021, monthly rent is \$2650, and the tenant paid a security deposit and pet damage deposit of \$1,325, each.

The tenant submitted that she was served the 1 Month Notice by personal service on February 16, 2022. The move-out date listed on the 1 Month Notice was March 31, 2022. Filed in evidence was a copy of the 1 Month Notice.

The 1 Month Notice listed the reason that the tenant is repeatedly late paying rent.

The tenant said the monthly rent is paid in full through the day of the hearing, and the landlord has acknowledged the receipt of the monthly rent. The tenant said she has not been issued any rent receipts showing for use and occupancy.

Analysis

In a case where a tenant has applied to cancel a Notice to end a tenancy, Rule 7.18 states the landlord has the burden of providing sufficient evidence to terminate the tenancy for the reason given on the Notice.

In this case, the 1 Month Notice was issued pursuant to section 47(1)(b), and I find that the tenant disputed the 1 Month Notice within the timeframe required under the Act.

As the landlord failed to attend the hearing to present their evidence, I decline to consider any written evidence of the landlord.

I further find that the landlord has by her actions reinstated the tenancy by not indicating to the tenant that the acceptance of the monthly rent was for use and occupancy and by her failure to attend the hearing on the tenant's application.

As a result of the above, I therefore **ORDER** that the 1 Month Notice dated February 16, 2022, is **cancelled**, and has no force or effect. The tenancy continues until it may otherwise legally end under the Act.

Conclusion

The tenant's application seeking cancellation of the landlord's 1 Month Notice is granted as I have ordered the Notice be cancelled.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 06, 2022

Residential Tenancy Branch