



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REAL PROPERTY MANAGEMENT
EXECUTIVES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On April 6, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 14, 2022, this hearing was scheduled to commence via teleconference at 1:30 PM on July 29, 2022.

Neither Tenant attended the hearing at any point during the 11-minute teleconference. However, S.P. attended the hearing as an agent for the Landlord. At the outset of the hearing, I informed S.P. that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, S.P. provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:41 PM. Only a representative for the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicants did not dial in, and I also confirmed from the teleconference system that the only party who had called into this teleconference was an agent for the Landlord.

S.P. advised that the Tenants and the Landlord had settled this dispute last month and that the Tenants likely forgot to call into the hearing and/or withdraw this Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.P. advised that the tenancy originally started on August 15, 2018, that rent was currently established at \$3,552.40 per month, and that it was due on the first day of each month. As well, a security deposit of \$1,750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

However, he testified that the parties signed a new tenancy agreement on June 23, 2022, but the terms and details of the tenancy were retained from the original tenancy agreement. A copy of this alleged new tenancy agreement was not submitted as documentary evidence for consideration.

With respect to the Notice, it appears as if it was served to the Tenants by being posted on their door on March 29, 2022, and the reason the Landlord served the Notice is because the "Tenant has allowed an unreasonable number of occupants in the unit/site/property/park." The effective end of the tenancy was noted on the Notice as April 30, 2022. A copy of this Notice was submitted as documentary evidence for consideration.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

As the Tenant did not attend the hearing, I have dismissed their Application to dispute this Notice in its entirety. Pursuant to Section 55(1) of the *Act*, the Landlord may be awarded an Order of Possession in this instance. However, S.P. testified that the Landlord was not seeking an Order of Possession anymore.

Based on this testimony, and given the fact that the signing of a potentially new tenancy agreement after service of the Notice would have likely rendered the Notice a moot point, I am satisfied that it is not necessary to grant an Order of Possession to the Landlord.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution without leave to reapply. Furthermore, I do not grant an Order of Possession to the Landlord as the Landlord was no longer seeking one. This tenancy continues until 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: July 29, 2022

Residential Tenancy Branch