



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 the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on April 26, 2022 by leaving a copy at the residence with the Tenant's 18-year-old daughter who apparently resides with the Tenant. The Tenant confirmed receipt of the One Month Notice but was concerned that it was left with her child. The age of majority in British Columbia is 19 years old which is the age when someone is legally considered an adult. I find the One

Month Notice was not properly served on the Tenant as it was left with her daughter who has not reached the age of majority, and I cancel the One Month Notice.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on May 12, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenant provided me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on May 17, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issue to be Decided

1. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this tenancy began as a fixed term tenancy on December 1, 2019. The fixed term ended on December 1, 2020, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,639.00 payable on the first day of each month. A security deposit of \$1,300.00 was collected at the start of the tenancy and the Tenant believes that the security deposit is still held by the Landlord.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Due to improper service of the One Month Notice, I canceled the notice. The Landlord did not attend this hearing to provide evidence on the matter. I find that the One Month Notice is canceled, and the tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover her application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 26, 2022

Residential Tenancy Branch