



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFL

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:25 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant SC ("tenant") and I were the only ones who had called into this teleconference.

The tenant testified that she sent the Notice of Dispute Resolution Proceedings package to the landlord via registered mail to the landlord's residence on July 8, 2022. The tenant provided the tracking number for the mailing in her evidence, which is recorded on the cover page of this decision. The tenant testified that the landlord's address as shown on the envelope does not match the address provided on the notice to end tenancy because the landlord's address on the notice to end tenancy is wrong.

The tenant knows the address of the building the landlord actually lives in because she delivers mail to the landlord at that building when mail for the landlord comes to their PO box. The tenant also put an incorrect suite number on the mailing, however the postal worker advised her that they would check for identification of the landlord when he picks up his registered mail. During the hearing, I checked the Canada Post website using the tracking number provided and confirmed the package was delivered on July 13th.

In addition, the tenant gave affirmed testimony that she spoke to the landlord last night and the landlord confirmed signing for the package at the Canada Post office and that he has the tenant's dispute application. The tenant further testified that the landlord advised her that he doesn't want to proceed with the eviction and that he would not attend the hearing. The tenant testified that she didn't want to cancel the hearing because the landlord wouldn't put his words into writing. I deem the landlord served with the tenant's Notice of Dispute Resolution Proceedings package on July 13th, pursuant to section 71 of the Act, in accordance with section 89.

This hearing proceeded in the absence of the landlord pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

The tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities, when she had been served with a 1 Month Notice to End Tenancy for Cause. Based on the tenant's request I amended the application to reflect a dispute to the 1 Month Notice to End Tenancy for Cause in accordance with section 64(3) of the Act.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The tenant acknowledges being personally served with the landlord's 1 Month Notice to End Tenancy for Cause on June 11, 2022. A copy of the notice was provided as evidence. The reasons for ending the tenancy are:

1. the tenant is repeatedly late paying rent;
2. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;

Under "details of cause" the landlord writes:

Tenant has done unauthorized renovations and quite often late paying rent. Tenant has not payed some utilities. Handed off at June 11 3:00 p.m.

The tenant acknowledges writing on the notice the following:

Not true, gave consent.

Stayed overnight after eating dinner w/us and stated – Looks much better.

The tenant testified that the reasons for ending the tenancy on the notice to end tenancy are all untrue. The landlord was not present to dispute the tenant's testimony or present any evidence or submissions.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant was in receipt of the landlord's One Month Notice on June 11, 2022. The tenant filed an application to dispute the notice on June 17, 2022, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the tenant in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Accordingly, in the absence of any testimony or evidence from the landlord, who bears the burden of proof in this matter, I find that the landlord has failed to prove the grounds for issuing the One Month Notice.

Therefore, the tenant's application is successful and the landlord's One Month Notice dated June 10, 2020 (as written on notice) is cancelled and of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The tenant may reduce a single payment of rent owing to the landlord by \$100.00 in full satisfaction of the filing fee recovery.

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated June 10, 2020 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may reduce a single payment of rent owing to the landlord by \$100.00 in full satisfaction of the filing fee recovery.

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: August 12, 2022

Residential Tenancy Branch