



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the applicant filed on April 5, 2022 for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated March 31, 2022 (the One Month Notice); and
- the filing fee.

The applicant and his counsel attended the hearing; the respondent did not. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The applicant testified he served the Notice of Dispute Resolution Proceeding and evidence on the respondent on April 14, 2022 by registered mail to the respondent's address on the One Month Notice, and provided a tracking number in support, as noted on the cover page of this decision. I find the applicant served the respondent in accordance with section 89 of the Act, and deem the materials received by the respondent on April 19, 2022, in accordance with section 90 of the Act.

Preliminary Matters

Tenancy

The One Month Notice names only one person; that person has the initials TC. A tenancy agreement is not submitted as evidence. The applicant testified that TC is his former partner, who moved out of the rental unit in early 2009. The applicant testified

that he was not named on the tenancy agreement, but has been living there and paying the rent ever since.

The applicant testified that he pays rent in the amount of \$1,051.00 a month, and that rent is due on the first of the month.

Section 6(1) of the Act states that the rights, obligations, and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement.

“Tenancy agreement” is defined in the *Residential Tenancy Act* (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

[Residential Tenancy Policy Guideline](#) 9. Tenancy Agreements and Licences to Occupy states:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord’s right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

I accept the applicant’s affirmed undisputed testimony that he has lived in the rental unit since prior to 2009, and that since early 2009 the respondent has been accepting the monthly rent for the unit from the applicant.

I find there is an implied tenancy agreement between the applicant and the respondent, which includes the same terms as the written tenancy agreement between TC and the landlord. I will refer to the parties respectively as the “tenant” and the “landlord” for the remainder of the decision.

Non-attendance of Landlord

Residential Tenancy Branch Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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 did not attend the hearing to prove the grounds on which the One Month Notice was issued, I cancel the Notice and find that the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in his application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenant's application is granted.

The One Month Notice is cancelled. The tenancy will continue until it is 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: August 3, 2022

Residential Tenancy Branch