



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code **CNC-MT**

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- more time to make an application to cancel the Landlord's One Month Notice to End Tenancy for Cause dated April 12, 2022 ("1 Month Notice") pursuant to section 58; and
- if an extension of time is granted, cancellation of the 1 Month Notice pursuant to section 40.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 11:37 am in order to enable the Landlord to call into this teleconference hearing scheduled for 11:00 am. The Tenant and her husband ("PD") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Tenant, PD and I were the only ones who had called into this teleconference.

The Tenant stated she served the NDRP and her evidence (collectively the "NDRP Package") on the Landlord by registered mail on April 29, 2022. Based on the undisputed testimony of the Tenant, I find the NDRP Package was served by the Tenant on the Landlord pursuant to the provisions of section 81 and 82 of the Act. Pursuant to section 83 of the Act, I find the Landlord was deemed to have received the NDRP Package on May 4, 2022.

Preliminary Matter – Amendment to Application to Remove and Add Respondent

At the outset of the hearing, I noted the 1 Month Notice stated the name of the landlord was LCD and the landlord's agent was CK. However, the Application stated the name of the landlord was CK. The Tenant requested I amend the Application to remove CK as a respondent and to add LCD as the respondent.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlord could reasonably have anticipated the Tenant would seek to add LCD as the Landlord and to remove Landlord's agent CK a respondent. As such, pursuant to Rule 4.2, I order the Application to be amended to remove CK as the respondent and to add LCD as the respondent.

Preliminary Matter – Effect of Non-Attendance of Landlord at Hearing

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") 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 such, even though the Tenant made the Application, the Landlord must meet the burden of proving that, on a balance of probabilities, it is more likely than not that the 1 Month Notice is valid.

Rules 7.1, 7.3 and 7.4 of the RoP state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 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 the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Landlord did not attend the hearing before it ended at 11:37 am, being more than 10 minutes of its commencement, I find the Landlord has not met the burden of proof that it is more likely than not that the 1 Month Notice is valid. As such, I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the Act.

Conclusion

The 1 Month Notice is cancelled. The 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 *Manufactured Home Park Tenancy Act*.

Dated: August 4, 2022

Residential Tenancy Branch