



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:41 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M. The landlord did not attend the hearing. Tenant DB (the tenant) attended the hearing and was 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 Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I accept the tenant's testimony that the landlord was served with the application by registered mail on June 09, 2022 and the evidence on September 16, 2022, in accordance with section 89(1)(c) of the Act (the tracking numbers are recorded on the

cover of this decision). The tenant mailed both packages to the landlord's address for service recorded on the tenancy agreement as the landlord's address for service.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the application on June 14, 2022 and the evidence on September 21, 2022 in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – order for the landlord to comply

The tenant affirmed the claim for an order for the landlord to comply was heard on August 12, 2022 and a decision was rendered. The prior application file number is recorded on the cover page of this decision.

Thus, the tenant's claim for an order for the landlord to comply is *res judicata* - a matter already decided upon – and I decline to hear it.

One month notice to end tenancy

The tenant confirmed receipt of the Notice dated May 26, 2022.

The tenant submitted this application on May 30, 2022. I find the tenant disputed the Notice before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the Notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Rule of Procedure 7.4 states: "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."

As the landlord did not attend this hearing, the Notice is therefore cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the Act.

Filing fee

As the tenant was successful in this application, pursuant to section 72 of the Act, I authorize the tenant to recover the \$100.00 filing fee.

Conclusion

The May 26, 2022 Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from a future rent payment to recover the 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 *Residential Tenancy Act*.

Dated: October 11, 2022

Residential Tenancy Branch