



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DPM RENTAL MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated September 29, 2022 ("One Month Notice"); and recovery of their \$100.00 Application filing fee.

The Tenants appeared at the teleconference hearing, but no one attended on behalf of the Landlord. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenants, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenants.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about it. During the hearing, the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents in person and by email sent on October 27, 2022. The Tenants said that the Landlord's Agent called them to say that no one would attend the hearing on behalf of the Landlord, as they were rescinding the One Month Notice and allowing the tenancy to continue. Based on the evidence before me on this matter, I find that the Landlord was

served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenants in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant, K.K., provided the Parties' email addresses in the Application and she confirmed hers in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenants that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed:
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Tenants confirmed that the periodic tenancy began on December 1, 2017, with a current monthly rent of \$1,400.00, due on the first day of each month. The Tenant agreed that she had paid the Landlord a security deposit of \$625.00, and no pet damage deposit. The Tenant said the Landlord still holds the security deposit in full.

The Tenants submitted a copy of the One Month Notice, which was signed and dated September 29, 2022, and which has the rental unit address. The Tenant said the One Month Notice was served via email on September 29, 2022, with an effective vacancy date of October 29, 2022, which is automatically corrected by the Act to be October 31, 2022. The One Month Notice was served on the grounds that the Tenants are repeatedly late paying rent, and that the Tenants or a person permitted on the property by the Tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord; and seriously jeopardized the health or safety or lawful right of another occupant or the landlord. However, the Landlord did not attend the hearing to explain the merits of this eviction notice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an Order of Possession if – first - I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Given the Tenants' evidence that the Landlord advised them that they were withdrawing the One Month Notice, and the Landlord's failure to attend the hearing, I find that the One Month Notice is not valid or enforceable, and I cancel it, pursuant to section 62 of the Act.

Further, given that the Tenants had to apply for dispute resolution to challenge this One Month Notice, I grant the Tenants recovery of their \$100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act.

The **Tenants are authorized to deduct \$100.00 from one upcoming rent payment** in complete satisfaction of this award, pursuant to section 72 of the Act.

Conclusion

The Tenants are successful in their Application, as the Landlord withdrew the One Month Notice and failed to attend the teleconference hearing to explain the merits of the One Month Notice. Therefore, the One Month Notice is cancelled and is void and unenforceable.

The tenancy will continue until ended in accordance with the Act.

The Tenants are also awarded recovery of their **\$100.00** Application filing fee from the Landlord. The Tenants are **authorized to deduct \$100.00 from one upcoming rent payment** in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 15, 2022

Residential Tenancy Branch