



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

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 tenant applied on September 13, 2022 for an order to cancel a One Month Notice to End Tenancy for Cause, dated August 19, 2022 (the One Month Notice), and sought more time to dispute the Notice.

The hearing was attended by the tenant and their advocate (TW), but not the landlord. Those in attendance 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.

TW testified they served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the landlord by registered mail on October 13, 2022, and provided a tracking number as noted on the cover page of the decision. I find the tenant served the landlord in accordance with section 89 of the Act, and deem the materials received by the landlord on October 18, 2022, in accordance with section 90 of the Act.

Preliminary Matters

During the hearing, I had explained that Section 66 of the Act permits an arbitrator to extend the time limit to make an application for dispute resolution in exceptional circumstances. I explained that this ability is limited by section 66(3) of the Act, which states that an arbitrator must not extend the time limit to make an application to dispute a notice to end tenancy beyond the effective date of the notice. I told the tenant and TW that as the effective date on the notice is September 30, 2022, and I was hearing the matter on November 7, 2022, pursuant to section 66(3) of the Act, I could not consider granting the tenant more time to apply to dispute the notice, and that the tenancy had ended.

However, on further reflection, I find the tenancy will continue as the landlord failed to prove the reason for the One Month Notice.

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 ground on which the Notice was issued, I cancel the One Month Notice, and find that the tenancy will continue until it is ended in accordance with the Act.

I recognize and regret that my initial oral finding that the tenancy has ended may have caused the tenant great distress.

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: November 28, 2022

Residential Tenancy Branch