



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 30, 2022, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on September 20, 2022 (the "Notice"), an order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* (the "Legislation") and/or the residential tenancy agreement as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on December 1, 2022. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 11:10 a.m. Additionally, 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.

As the Landlord failed to call into the hearing I considered service of the Tenant's application materials. The Tenant testified that he served the Landlord with the Notice of Hearing, the Application and his evidence in support of the claim by registered mail sent on October 16, 2022. At the time of the hearing the Tenant had not uploaded the registered mail tracking number. I gave the Tenant leave to file that evidence and confirm that immediately after the hearing concluded the Tenant filed proof of service on

the Landlord. The tracking number for that package is included on the unpublished cover page of this decision.

Section 90 of the *Act* provides that documents served by registered mail are deemed served five days after mailing; I therefore find the Landlord was served with notice of this hearing on October 21, 2022 and I proceeded with the hearing in the Landlord's absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Act*, the *Regulations*, and/or the tenancy agreement?
3. Is the Tenant entitled to recovery of the filing fee?

Analysis and Conclusion

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

In this case the Landlord failed to call into the hearing and also failed present any evidence or testimony in support of the Notice. In the absence of the Landlord's participation in the hearing, I find the burden of proving the reasons for ending this tenancy has not been met. As such, I grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant did not make any submissions with respect to his request for an order that the Landlord comply with the legislation or the tenancy agreement. I therefore dismiss that claim with leave to reapply.

As the Notice has been cancelled, I find the Tenant should recover the filing fee. I therefore authorize the Tenant, pursuant to section 72 of the *Act* to withhold \$100.00 from his next rent payment as recovery of that 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: December 01, 2022

Residential Tenancy Branch