



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes CNC MNDCT FFT

Introduction

The tenant seeks an order cancelling a *One Month Notice to End Tenancy for Cause* (the “Notice for Cause”) pursuant to section 47 of the *Residential Tenancy Act* (the “Act”). The tenant seeks compensation pursuant to section 67 of the Act. And, the tenant also seeks to recover the cost of the filing fee pursuant to section 72 of the Act.

Service of Notice of Dispute Resolution Proceeding

A dispute resolution hearing was held on December 2, 2022 at 9:30 AM by teleconference. Only the tenant attended the hearing, which ended at 9:38 AM.

The tenant testified under oath that he served the landlord with a copy of the Notice of Dispute Resolution Proceeding by Canada Post registered mail on July 23, 2022. A copy of the Canada Post registered mail documentation was in evidence. Canada Post tracking information (www.canadapost-postescanada.ca/track-reperage/en#/home) indicates that the package was delivered and accepted on July 26, 2022.

Based on this undisputed oral and documentary evidence it is my finding that the landlord was served with the required Notice of Dispute Resolution Proceeding and paperwork necessary for them to participate in the dispute resolution proceeding.

Preliminary Issue: Invalid Notice to End Tenancy

A copy of the Notice was in evidence. On page two of the Notice the following “ground” was checked (reproduced from original):

☒ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of ^{contract} employment and employment has ended.

Under the “Details of Cause(s)” section at the bottom of page two the following information was written:

- (A) Contract to rent property has expired.
- (B) Tenant fails to maintain property during rental term, causing rat infestation on property.

The landlord has, I find, fundamentally changed the approved form in such a manner that it no longer complies with section 52 of the Act in form and content. Further, there is no ground under either section 47 or section 48 (“Landlord’s notice: end of employment with the landlord”) into which the altered language fits.

As indicated on page two of the written *Residential Tenancy Agreement*—a copy of which is in evidence—the tenancy was a fixed term tenancy from July 1, 2021 to June 30, 2022. After which, and box “D” is filled in to indicate as much, the tenancy continues on a month-to-month basis. A notice to end tenancy cannot be given simply because a fixed term tenancy has come to an end. As such, there is no legal basis for issuing the Notice for the reason indicated.

As for the second reference to the tenant failing to maintain the property, this is a description of why the landlord may have issued the Notice, but the specific, legal ground on which they issued the Notice is not anywhere indicated on the Notice. In the absence of any specified ground the Notice is of no force or effect.

Given the above it is my finding that the Notice is of no legal force or effect. It is of course cancelled. The tenancy continues until it is ended in compliance with the Act.

Issues

1. Is the tenant entitled to compensation?
2. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenant testified that he made various repairs to the rental unit. These repairs were done with the permission and consent of the landlord, who agreed to reimburse the tenant. The landlord partially reimbursed the tenant's expenses (\$4,723.06) by not requiring the tenant to pay rent (\$3,800.00 for the both the rental unit and the basement's rent, which is another rental unit in the property). But there is a balance of \$923.06 still owing by the landlord to the tenant. This is the amount sought.

Analysis

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 this tenancy, the tenant undertook repairs to the rental unit (an obligation that rests with a landlord under section 32(1) of the Act) at the behest of the landlord. The landlord agreed to compensate, or reimburse, the tenant for the cost of the repairs. He has mostly done so, but not entirely. The landlord, under an agreement with the tenant, still owes \$923.06 for the cost of those repairs.

Taking into consideration all of the undisputed oral and documentary evidence before me, it is my finding that the tenant has proven on a balance of probabilities that the landlord owes him \$923.06 for the cost of repairs to the rental unit.

As the tenant was successful in this application, he is entitled to recover the cost of the \$100.00 filing fee pursuant to section 72 of the Act.

In total the tenant is awarded \$1,023.06. The tenant shall be compensated for this amount by deducting this amount from his rent for January 2023. These deductions are authorized and ordered pursuant to sections 65(1)(b) and 72(2)(a) of the Act.

Section 65(1)(b) of the Act states that

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders: [...]

(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;

Section 72(2)(a) of the Act states that

If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord [...]

Conclusion

IT IS HEREBY ORDERED THAT:

1. The application is granted.
2. The *One Month Notice to End Tenancy for Cause*, signed on June 30, 2022, is cancelled, effective immediately.
3. The tenant is awarded \$1,023.06.
4. The tenant make a deduction of \$1,023.06 from his next rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 2, 2022

Residential Tenancy Branch