



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On August 9, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing; however, the Landlord did not attend at any point during the 13-minute teleconference hearing. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all in attendance provided a solemn affirmation.

Tenant S.M. advised that the Landlord was served with the Notice of Hearing and evidence package by registered mail on August 25, 2022 (the registered mail tracking number is noted on the first page of this Decision). As well, proof of service was submitted to corroborate this. She testified that the Landlord signed to receive this package. Based on this solemnly affirmed testimony and the evidence provided, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, I have accepted the Tenants’ evidence and will consider it when rendering this Decision.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:43 PM. Only the Applicants dialed into the teleconference during this time. 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 Applicants were the only other persons who had called into this teleconference.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.M. advised that the tenancy started on March 1, 2021, that rent was currently established at \$2,500.00 per month, and that it was due on the first day of each month. A security deposit of \$1,225.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

As well, she acknowledged that the Notice was posted to their door and placed in their mailbox on August 7, 2022. A copy of this Notice was provided as documentary evidence.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I find it important to note that the burden of proof is on the Landlord to substantiate the reasons for ending the tenancy. As the Landlord did not attend the hearing or provide evidence to justify why the Notice was served, I am not satisfied that the Landlord has established any grounds to substantiate service of the Notice. Therefore, I find that the Notice is cancelled and of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause dated August 5, 2022, to be cancelled and of no force or effect. This tenancy continues until 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: January 6, 2023

Residential Tenancy Branch