



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the Act) on August 8, 2022, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. on January 6, 2023, and was attended by the tenant J.A.L. (Tenant) and the landlord J.L.A. (Landlord), both of whom provided affirmed testimony. As the Landlord acknowledged receipt of the Notice of Dispute Resolution proceeding (NODRP) package, and stated that they have no concerns with the date or method of service, the hearing therefore proceeded as scheduled. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

I advised the parties that documentary evidence before me suggested that the tenancy had already ended and asked the parties if this was correct. The Tenant confirmed that they gave a one month notice to end their tenancy to the Landlord approximately one month after the One Month Notice was served on them by the Landlord, and that they moved out in accordance with their notice. The Landlord agreed. As a result, I find that

the Tenancy ended prior to the date of this hearing because the Tenants served the Landlord with notice to end their tenancy under section 45 of the Act. I therefore dismissed the Tenant's Application seeking cancellation of the One Month Notice because I was satisfied that the matter of enforceability of the One Month Notice served on the Tenants by the Landlord was rendered moot by the fact that the Tenants had already ended their tenancy under section 45 of the Act and vacated the rental unit.

The Tenant was displeased with this decision, and wanted me to assess validity of the One Month Notice anyway. I declined as the matter of possession was no longer at issue and I determined that it was both illogical and impractical to do so under the circumstances, as even if I were to find that the One Month Notice was invalid, cancellation of the One Month Notice would not continue the tenancy, as it had already ended, and I could not reinstate the tenancy as it had already been ended by the Tenants under a different section of the Act. As the Tenants' claim for cancellation of the One Month Notice was dismissed without leave to reapply, I declined to grant them recovery of the \$100.00 filing fee.

During the hearing, the Tenant also stated that they had made other claims in the Application, which they wanted addressed. I advised the Tenant that although they had added details about other issues in the description section of their claim seeking cancellation of the One Month Notice, doing so did not constitute an amendment to the Application or the filing of subsequent claims for issues other than those specifically applied for (Cancellation of the One Month Notice and recovery of the filing fee). As a result, I advised them that I could not make any findings of fact or law in relation to those issues as the hearing is limited to the matters claimed in the Application, which in this case is only cancellation of the One Month Notice and recovery of the filing fee, as set out under rule 6.2 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, I advised the Tenant that they remain at liberty to file an application for dispute resolution properly claiming for these issues, should they wish to do so.

Conclusion

The Tenants' Application seeking cancellation of a One Month Notice and recovery of the filing fee is dismissed without leave to re-apply.

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: January 6, 2023

Residential Tenancy Branch