



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on October 6, 2022 seeking an order to cancel the One Month Notice to End Tenancy (the “One Month Notice”) for cause. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 21, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The Tenant and the Landlord attended the hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing. The Landlord confirmed they received the Notice of Dispute Resolution Proceeding directly from the Tenant. The Tenant confirmed they received the prepared evidence of the Landlord. The Tenant did not prepare documentary evidence for this hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order that the Landlord cancel the One Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Landlord presented that they issued the One-Month Notice on September 30, 2022. They presented in the hearing that they reasons on the second page of the document. This included the Tenant's use of the washing machine very early in the morning, the Tenant's arguments and slamming of doors, smoking on the property, and unlawful activity on the property.

The Tenant responded to say that the Landlord also smokes on the property, and they have no other choice when it comes to use of laundry, because of their relatively heavy work schedule.

Analysis

The *Act* s. 47 is the provision that deals with a landlord ending the tenancy for many different conditions. Here, the Landlord apparently issued the One-Month Notice for reasons involving the Tenant's conduct.

In deciding on the end of tenancy, and whether the reasons for ending the tenancy are valid, the onus lies with a landlord to provide ample proof that the reasons are valid. More basically, regarding the validity of the notice to end tenancy, s. 52 states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) . . . state the grounds for ending the tenancy,
 - . . . and
 - (e) when given by a landlord, be in the approved form.

The *Act* requires that notices to end tenancy by a landlord be in the approved form. The Landlord did not provide a copy of the One-Month Notice; therefore, I cannot verify this. The landlord has not met the burden of proof to show the One-Month Notice is valid; therefore, I cancel any issued One-Month Notice dated September 30, 2022. It is of no legal effect.

With the One-Month Notice cancelled, the tenancy will continue and there is no order of possession.

Conclusion

For the reasons above, I order that the One-Month Notice issued on February 26, 2021 is cancelled and the tenancy remains in full force and effect. The Tenant was successful in this Application; therefore, I authorize the Tenant to deduct the \$100 Application filing fee from one single future rent payment.

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

Dated: February 21, 2023

Residential Tenancy Branch