



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of a One Month Notice to End Tenancy (“One Month Notice”) pursuant to section 47 of the Act
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- reimbursement of the filing fee pursuant to section 72 of the Act

The landlord did not attend the hearing. Tenants CS and LM attended. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenants testified that they received the dispute notice and respective materials on the landlord by registered mail dated October 27, 2022. They provided proof of Canada Post tracking information in evidence. Based on their testimony I find the landlord is deemed served on November 1, 2022 in accordance with sections 88, 89 and 90 of the Act.

Preliminary Issue

The tenant advised that there were two tenants on the tenancy agreement and applied to add the second tenant to the hearing. Pursuant to section 63(3)(c) of the Act the style of cause is amended accordingly.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant?
2. Is the tenant entitled to an order requiring the landlord to comply with the Act, regulations or tenancy agreement?
3. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The current tenancy agreement was provided in evidence and the tenancy in the current agreement commenced on June 1, 2022 on a month to month basis. Rent was \$2,030.00 per month due on the first day of the month. The landlord has returned a security deposit of \$1,000.00 to the tenants. The tenants vacated the rental unit on November 30, 2022.

The tenants testified that they served the One Month Notice on the landlord and the landlord was taking the position that the tenancy was for a fixed term, not month to month, and the One Month Notice given by the tenants was invalid.

Analysis

The landlord did not appear and has not made an application for dispute resolution. The landlord has returned the tenants' security deposit. The tenants no longer occupy the rental unit. Therefore, the tenants' application is moot as they do not require relief. The landlord did not serve a One Month Notice to End Tenancy for Cause pursuant to section 47 of the Act on the tenants.

The tenants did not provide any evidence that the landlord has not complied with the Act, regulations or tenancy agreement.

Therefore, the tenants' application is dismissed in its entirety as there is no notice issued by the landlord to consider, the tenants have vacated the rental unit, and the tenants' security deposit has been returned to them.

Conclusion

The tenants' application is dismissed.

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: February 27, 2023

Residential Tenancy Branch