



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 27, 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 March 21, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Preliminary Matter – parties’ service of evidence

The Landlord confirmed they received the Notice of Dispute Resolution Proceeding, served by the Tenant. The Landlord stated they consented to the Tenant’s service of evidence for this matter; however, they only became aware of evidence served on March 20 and 21, 2023, on the morning of the hearing.

The Landlord provided their own evidence in this matter on March 17, 2023. The Tenant stated this accounted for their service of evidence, in response, on March 20 and 21.

The *Residential Tenancy Branch Rules of Procedure* cover all aspects of the hearing, with their objective being “to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.” The Applicant’s evidence (i.e., that of the Tenant here) is to accompany the Application for Dispute Resolution (Rule 2.5). This includes “a copy of the Notice to End Tenancy, when the applicant seeks. . . to cancel a Notice to End Tenancy.”

Reciprocally, the Respondent’s evidence (i.e., that of the Landlord here) “must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing” (Rule 3.15).

The *Rules* grant an arbitrator discretion to consider new and relevant evidence that was not provided to the other in accordance with the rules set out above. (Rule 3.17) I find the late evidence from either party in this matter is prejudicial to the other. This is with consideration to the original Application date by the Tenant of October 27, 2022, and no issues raised by the Landlord on receiving a late notification about this hearing. I decline to accept the late evidence in this matter, and give that evidence no consideration herein.

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 Tenant indicated on their Application for this hearing that the Landlord issued the One-Month Notice on October 21, 2022. The Tenant did not present a copy of the document in their evidence.

In the hearing, the Landlord briefly described the issues they had with the Tenant extending the tenancy on a month-by-month basis, then creating a problem with amassed material and objects within the rental unit and the rental unit property.

In the hearing, the Landlord stated they did not know whether they provided a copy of the One-Month Notice document in their evidence.

Analysis

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

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 apparently issued by the Landlord on October 21, 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 any One-Month Notice issued on October 21, 2022 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: March 21, 2023

Residential Tenancy Branch