



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (Application) filed by the Tenant under the *Residential Tenancy Act* (the Act) on November 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 11:00 A.M. on March 20, 2023, and was attended by the Tenant, who provided affirmed testimony. No one attended on behalf of the Landlord. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

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

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As no one attended the hearing on behalf of the Landlord, I confirmed service of the documents as follows. The Tenant testified that the Notice of Dispute Resolution Proceeding (NODRP), which contains a copy of the Application and the Notice of Hearing, was sent to the Landlord, who resides above them in the same home, by

registered mail on November 25, 2022. The Tenant provided me with the registered mail tracking number, which I have recorded on the cover page of this decision. The Tenant stated that approximately one week later they asked the Landlord if it had been received, and they stated that it had not. The Tenant stated that they tracked the package using the tracking number and advised the Landlord that it was awaiting pickup at the post office.

As a result, and in the absence of any evidence or testimony to the contrary, I find that the Landlord was deemed served with the NODRP on November 30, 2022, regardless of whether they made attempts to pick it up from the post office or not, pursuant to section 90(a) of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #12. Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Tenant on November 22, 2023, for service by November 25, 2022. I therefore find that the NODRP was served within the timeline set out under section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

I confirmed that the details shown in the NODRP were correct, and based on the above, the hearing proceeded as scheduled despite the absence of the Landlord or an agent acting on their behalf, pursuant to rules 7.1 and 7.3 of the Rules of Procedure. Although the teleconference remained open for the 18-minute duration of the hearing, no one called in on behalf of the Landlord.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be emailed to them.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant stated that they were personally served with the One Month Notice on November 4, 2022, and sought its cancelation on November 8, 2022. The Tenant stated that they do not agree with the reasons for ending the tenancy given by the Landlord and that several days after filing the Application, the Landlord verbally withdrew the One Month Notice and advised them that they could stay.

Analysis

Based on the affirmed testimony of the Tenant and as there is no evidence or testimony to the contrary, I am satisfied that a tenancy to which the Act applies exists between the parties and that the Tenant disputed the One Month Notice on time.

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove that they had sufficient cause under the Act to issue the notice. As no one attended the hearing on behalf of the Landlord to provide any evidence or testimony for consideration, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that they have cause to end the tenancy under section 47 of the Act. Further to this, I note that no ground for ending the tenancy was selected on page two of the One Month Notice and that the reasons given for ending the tenancy in the details of cause section are not grounds for ending a tenancy under section 47 of the Act via a One Month Notice. As a result, I grant the Tenant's Application seeking cancellation of the One Month Notice.

As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. As per their request at the hearing, the Tenant is authorized to withhold \$100.00 from the next months rent payable under the tenancy agreement in recovery of this amount, pursuant to section 72(2)(a) of the Act.

Conclusion

I order that the One Month Notice is cancelled and of no force or effect.

Pursuant to section 72(2)(a) of the Act the Tenant is authorized to withhold \$100.00 from the next months rent payable under the tenancy agreement in recovery of the filing fee.

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

Dated: March 20, 2023

Residential Tenancy Branch