



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of a One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation the (Regulation) or tenancy agreement, under section 67;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:25 A.M. to enable the respondent to call into this teleconference hearing scheduled for 11:00 A.M. The respondent did not attend the hearing. Tenants SA (the tenant) and DE attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

I accept the tenant's testimony that he registered mailed the notice of hearing and the evidence (the materials) on February 10, 2023. The tenant addressed the package to "Manager – rental office" and used the respondent's address for service listed in the Notice. The tracking number and the respondent's address are recorded on the cover page of this decision.

The tenants confirmed receipt of the respondent's evidence and that they had enough time to review it.

Based on the tenant's convincing testimony and the tracking number, I find the tenants served the materials in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the respondent is deemed to have received the materials on February 15, 2023, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Named Respondent

The application lists respondent landlord NW. The tenant affirmed the landlord is Realstar, which is represented by NW and JA.

The Notice submitted into evidence indicates the landlord is Horizon Towers Holdings Ltd. NW signed the Notice as the landlord's agent.

The respondent submitted into evidence a letter dated September 19, 2022:

Horizon Towers Holdings Ltd. acquired the Property from Boardwalk General Partnership on May 29, 2014. Any tenancy matter before the Board with respect to the Property referencing Boardwalk General Partnership should be amended to reflect Horizon Towers Holdings Ltd., c/o Realstar Management Partnership.

Based on the Notice, the September 19, 2022 and the tenant's testimony, I find the landlord is Horizon Towers Holdings Ltd., c/o Realstar Management Partnership.

Pursuant to section 64(3)(a) of the Act, I have amended the application to name the respondent landlord Horizon Towers Holdings Ltd., c/o Realstar Management Partnership.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except the cancellation of the notice to end tenancy which will be decided upon.

One month notice to end tenancy

The tenants confirmed receipt of the Notice dated January 26, 2023 on the date the Notice was issued.

The tenants submitted this application on January 30, 2023. I find the tenants disputed the Notice before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the Notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Rule of Procedure 7.4 states: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

As the landlord did not attend this hearing, the Notice is therefore cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the Act.

Filing fee

I authorize the tenants to recover the \$100.00 filing fee, as the tenants were successful in this application.

Conclusion

The Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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: May 25, 2023

Residential Tenancy Branch