



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

On March 27, 2023, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) dated March 16, 2023, and to recover the filing fee for this application. The matter was set for a conference call.

The Tenant and their advocate (the “Tenant”) attended the hearing. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified the Application for Dispute Resolution and Notice of Hearing had been served to the Landlord by Canada Post Registered mail, sent on April 1, 2023, a Canada Post tracking number was provided as evidence of service. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision

Issues to be Decided

- Should the Notice dated March 16, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on October 1, 2019, as month to month tenancy. Rent in the amount of \$1,800.00 is to be paid by the first day of each month, and that the Tenant paid a \$900.00 security deposit. The Tenant provided a copy of the tenancy agreement into documentary evidence.

The Notice records that the Tenant was served with the Notice to End tenancy, by email, on March 16, 2023, indicating that the Tenant is required to vacate the rental unit as of April 30, 2023. The reason checked off by the Landlord within the Notice was as follows:

- *Tenant has assigned or sublet the rental unit/site/property without landlord's written consent.*

The Tenant provided a copy of the Notice to End tenancy into documentary evidence, requesting to cancel the Notice as they have not sublet or assigned the rental unit as they still reside in the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence

submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

This matter was set for hearing by telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Tenant.

Since the Landlord did not attend the hearing by 9:41 a.m. to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reasons stated. I find that the Landlord has failed to show cause to end the tenancy.

Therefore, I grant the Tenant's application to cancel the Notice dated March 16, 2023, and find that the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is granted permission to take a one-time deduction of \$100.00 from their next month's rent in satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice dated March 16, 2023, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00 from their next month's rent.

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