



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Cancellation of the One Month Notice to End Tenancy for Cause (the "Notice")
- Authorization to assign or sublet
- An Order directing the landlord to comply with the *Act*, regulation or tenancy agreement
- Authorization to recover the filing fee for this application from the landlord, pursuant to section 72

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Severance

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 tenant's other claims to warrant that they be heard together.

The tenant's 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 tenant's claims with leave to reapply except cancellation of the Notice and recovery of the filing fee for this application.

Issues to be Decided

Should the Notice be cancelled or upheld?

Evidence and Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on August 15, 2021
- Monthly rent in the amount of \$2,142.00 is payable on the fifteenth day of each month
- A security deposit of \$1,050.00 was paid by the tenant to the landlord

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the Notice was personally served on the tenant on October 22, 2022. Both parties agree that the landlord cancelled the Notice and the parties entered into a Mutual Agreement to End Tenancy effective April 15, 2023 (the "Mutual Agreement").

As both parties agree that the Notice was cancelled by the landlord, I find that the landlord is not entitled to an Order of Possession under the Notice. The landlord testified that the tenant was supposed to move out on April 15, 2023 pursuant to the Mutual Agreement but did not do so.

The landlord did not file an application for dispute resolution seeking an Order of Possession based on the Mutual Agreement. As the Mutual Agreement is not properly before me, I find that I cannot adjudicate it. The landlord has leave to apply for an order

of possession based on the Mutual Agreement, but I cannot render a decision on it in this hearing.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord under section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The Notice is cancelled and of no force and effect.

The tenant is entitled to deduct \$100.00 from 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: June 12, 2023

Residential Tenancy Branch