



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNE, CNC, FFT

Introduction and Preliminary Matters

On March 23, 2023, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking to cancel a One Month Notice to End Tenancy for End of Employment pursuant to Section 48 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

V.D. attended the hearing as an advocate for the Tenants, and the Tenant C.P. attended the hearing later. However, the Landlord did not make an appearance at any point during the 33-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

V.D. advised that the Tenants’ Notice of Hearing and evidence package was served to the Landlord by hand by a courier on April 21, 2023. While no documentary evidence was submitted to corroborate this service, I note that the Landlord uploaded documentary evidence to this file on May 18, 2023. Based on V.D.’s solemnly affirmed testimony, and the Landlord’s submission of evidence, I am satisfied that the Landlord was more likely than not duly served with the Tenants’ Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant advised that they were never served with a 10 Day Notice to End Tenancy for Unpaid Rent, and this was disputed in error. As well, he indicated that they were also never served with a One Month Notice to End Tenancy for End of Employment, and this was also disputed in error as they were actually served with a One Month Notice to End

Tenancy for Cause (the “Notice”). As it is clear by the Notice that was served, the reason checked off related to cause and not to end of employment. As such, I find it reasonable to conclude that Tenants made an error on their Application and meant to dispute a One Month Notice to End Tenancy for Cause instead. Consequently, the Tenants’ Application has been amended to reflect this correction.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on or around June 15, 2020, that he was not entirely sure how much rent was per month, but it was due on the first day of each month. A security deposit of likely \$550.00 was also paid. A complete copy of the signed tenancy agreement was not submitted as documentary evidence for consideration.

He then testified that the Notice was served by being attached to the Tenants' door on March 13, 2023. The reason the Notice was served is because the "Tenant has allowed an unreasonable number of occupants in the unit/site/property/park." The effective end date of the tenancy was noted as April 14, 2023, on the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(c) there are an unreasonable number of occupants in a rental unit;

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing the Notice, I note that the Landlord has indicated that the dispute address, at the bottom of the Notice, that the Tenants were required to vacate from was the same as his own address. I highlight that this form is fairly straightforward and not challenging to complete accurately. As it is clear from the information at the top of the Notice that the Landlord noted the Tenants' actual address, I find this error to be a fatal flaw as it is confusing as to which address the Tenants were required to vacate from. As such, I am satisfied that this is an invalid Notice, and it is cancelled and of no force or effect.

Regardless, even if I were to accept that this was a valid Notice, I find it important to note that the burden of proof lies on the party issuing the Notice to substantiate the reason for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the ground for ending the tenancy. As such, I am not satisfied of the validity of the Notice, and this is another reason why the Notice of March 13, 2023, is cancelled and of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent in satisfaction of this claim.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of March 13, 2023, to be cancelled and of no force or effect.

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: July 17, 2023

Residential Tenancy Branch