



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

¹DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, his agent, and the landlord's agent.

During the hearing the parties acknowledged that the landlord had issued the tenant a 10 Day Notice to End Tenancy for Unpaid rent, after this 1 Month Notice to End Tenancy for Cause had been issued to the tenant, because, the landlord states they were not aware if the tenant would be moving out as a result of the original Notice to End and took the tenant off his automatic payment plan. As a result the landlord did not accept the rent the tenant had offered for October 1, 2011.

As the tenant filed his Application for Dispute Resolution to dispute the 1 Month Notice to End Tenancy on September 22, 2011 and served the landlord with notice of this hearing on September 23, 2011, I find the landlord was well aware the tenant was disputing this notice and had no right to change the payment pattern as previously established. During this hearing, I ordered the tenant to pay rent immediately for the month of October and to the landlord to accept the rent payment.

The landlord's agent did not verbally request an order of possession.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began as a 1 year and 1 day fixed term tenancy beginning on April 1, 2011 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid.

The landlord testified that an agent for the landlord served the tenant with a 1 Month Notice to End Tenancy on August 28, 2011 with an effective vacancy date of September 30, 2011 by posting it on the rental unit door citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenant's agent testified the tenant did not receive any such notice and that despite being hospitalized shortly after August 28, 2011 the tenant had no idea he had been issued a notice to end tenancy and was verbally informed that he had to be out of the unit within 2 weeks.

The landlord's agent testified that she was not the agent that served the notice on the tenant and that she was unaware if there were any witnesses to the service of the notice. The agent went on to say that the agent that served the notice no longer works for the landlord and is not available to provide any testimony.

Analysis

Section 88 of the *Act* allows a landlord to serve a Notice to End Tenancy on a tenant by attaching a copy to a door or other conspicuous place at the address at which the person resides.

In the case before me, the landlord asserts, without corroborating evidence or testimony, that the notice was served in this manner, however, the as the tenant disputes that he ever received such a notice posted on his door. In the absence of testimony from the agent that served the document or any other evidence or testimony, I find the landlord has failed to establish the tenant was served with the Notice to End Tenancy in accordance with the *Act*.

Conclusion

For the reason noted above, I grant the tenant's Application to disregard and cancel the 1 Month Notice to End Tenancy for Cause, issued by the landlord on August 28, 2011. I find the tenancy to be in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid for this application. I order the tenant may deduct this amount from his next rental payment, in accordance with Section 72(2)(a).

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: October 24, 2011.

Residential Tenancy Branch