



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on August 25, 2017 to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), and to recover the filing fee from the Landlords.

Preliminary Matters

One of the Landlords, the Tenant and the Co-Tenant appeared for the hearing. However, only the Tenant and the Landlord provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application and notice of this hearing on September 6, 2017 by registered mail.

The Landlord confirmed that she had not provided any evidence for the Tenant's Application but had filed her own Application requesting an Order of Possession because the Tenant had not filed within the time limits to dispute the 1 Month Notice.

The Landlord's Application was not before me. The Landlord provided the file number, which is detailed on the front page of this Decision. I determined this had been scheduled to be heard on November 24, 2017 at 9:00 a.m. However, for reasons which I have not been able to determine, the Landlord's Application had not been crossed with this hearing to determine the Tenant's Application; likely because the Landlord filed her Application after she received the Tenant's Application all of which seems to have occurred on the same day within a short space of time.

As a result, I asked the parties to provide evidence on the service of the 1 Month Notice so that I could make a potential determination on both Applications. The parties confirmed that the Tenant was served with the 1 Month Notice dated August 10, 2017 by registered mail on August 12, 2017. The parties also confirmed that the Tenant had received the 1 Month Notice by mail on August 18, 2017.

Therefore, as the Tenant had filed the Application on August 25, 2017, this was made within the 10 day time limit provided for by Section 47(4) of the *Residential Tenancy Act* (the "Act"). As a result, I determined that the Landlord's Application was premature, but informed the Landlord that she could still be entitled to an Order of Possession under Section 55(1) of the Act in this hearing if she could prove the 1 Month Notice.

The Landlord confirmed that while the Tenant was put on notice of other issues in this tenancy, the reason elected on the 1 Month Notice that the Tenant is alleged to have given falsely information to a prospective buyer of the rental property, concerned the Tenant's refusal to vacate the rental unit during viewings for the sale of the property. The Landlord stated that it was her understanding that the Tenant was required to vacate the rental unit after she is given written notice of the viewing.

The Landlord was informed that the Act does not require a tenant to actually vacate the rental unit when a landlord affects legal entry into the rental unit, such as conducting a viewing for sale of the property.

The Landlord stated that she was not aware of this and confirmed that the Tenant had not interfered in any other way during the viewings she had so far. The Landlord explained that she just wanted to sell the house peacefully.

Accordingly, the Landlord withdrew the 1 Month Notice with the consent of the Tenant. Therefore, there were no legal findings for me to make on the Tenant's request to cancel the 1 Month Notice, which is hereby dismissed.

The Tenant confirmed her request to recover the filing fee and the Landlord had no objection to this. Accordingly, the Tenant may deduct \$100.00 from her next installment of rent pursuant to Section 72(2) (a) of the Act.

As the 1 Month Notice was withdrawn by the consent of both parties, the Landlord was informed that her Application scheduled for November 24, 2017 was now moot. The Landlord accordingly withdrew the Application. Therefore, there is no requirement now for the parties to appear for that hearing. The parties may want to reference Policy Guideline 7 which provides guidance on a landlord's right to enter a rental unit.

Conclusion

The parties withdrew the 1 Month Notice dated August 10, 2017. The Tenant's Application is dismissed as the tenancy will continue until such time it is ended in accordance with the Act. The Tenant may recover her filing fee from rent.

The Landlord's Application scheduled to be heard on November 24, 2017 is dismissed without leave to re-apply. This file is now closed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 22, 2017

Residential Tenancy Branch