



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC FFT

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

The tenant confirmed receipt of the 1 Month Notice which was placed under his door on January 25, 2018. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on January 28, 2018, three days after service of the notice under his door.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Is the tenant entitled to recovery of his filing fee for this application from the landlord?

Background and Evidence

The tenant, in his evidence, submitted that he was served a new 1 Month Notice under his door while attending a hearing on January 25, 2018 with the landlord. The tenant submitted that this 1 Month Notice was issued as a harassment tactic by the landlord, and was issued by the landlord indicating the exact same reason as the previous 1 Month Notice dated December 4, 2017, which was cancelled by the Arbitrator after the hearing on January 25, 2018.

The landlord indicated at the hearing that he had no submissions to make in this hearing.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant is deemed to have received the 1 Month Notice on January 28, 2018, and filed his application on February 5, 2017. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

As the tenant was successful in his application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

The tenant had also made an application for the landlord to comply with the *Act*. As I am not satisfied that the landlord had failed to comply with the *Act*, I dismiss this portion of the tenant's application.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice of January 25, 2018 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for the landlord to comply with the *Act* is dismissed.

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: April 10, 2018

Residential Tenancy Branch