



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DART COON CLUB OF CANADA and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy, pursuant to section 47.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for Cause, pursuant to sections 47 and 55.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant confirmed their email address for service of this Decision.

Preliminary Issue- Service

The tenant testified that the landlord and the landlord's property manager were both served with a copy of the tenant's application for dispute resolution via registered mail on September 10, 2022. In the hearing the tenant provided the Canada Post tracking

numbers for the above mailings, they are located on the cover page of this decision. Based on the tenant's undisputed testimony and the Canada Post tracking numbers entered into evidence, I find that the landlord was deemed served with the tenant's application for dispute resolution on September 15, 2022, five days after their registered mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Landlord's Non-Attendance

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the landlord I order the landlord's application dismissed without liberty to reapply.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?

Background and Evidence

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

The tenant provided the following undisputed testimony. This tenancy began on March 1, 2009. Monthly rent in the amount of \$1,297.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord.

The tenant testified that the landlord posted a One Month Notice to End Tenancy for Cause dated August 17, 2022 (the "Notice") on her door. The tenant testified that she

received the Notice the day before she filed to dispute it. The tenant filed to dispute the Notice on August 19, 2022.

The landlord did not attend and did not provide testimony regarding the Notice.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I find that the landlord has not proved the reason they wish to end the tenancy. The Notice is therefore cancelled and of no force or effect. This tenancy will continue in accordance with the *Act*.

Conclusion

The Notice is 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: October 04, 2022

Residential Tenancy Branch