



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, AAT, FF

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), and for an order suspending or setting conditions on the landlord's right to enter and allowing access to the rental unit the rental unit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

As a **preliminary issue**, I have determined that the tenant's portion of the application dealing with a request for an order suspending or setting conditions on the landlord's right to enter the rental unit and allowing access to the rental unit is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for such an order, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The parties stated that there is a written tenancy agreement; however neither party submitted the agreement.

I heard testimony that this tenancy started on May 1, 2011, monthly rent is \$400.00 and the tenant paid a security deposit of \$200.00 at the beginning of the tenancy. I also heard testimony that the tenancy is a single room occupancy.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause.

Neither party submitted the Notice into evidence; however the landlord testified and the tenant agreed that the Notice was dated December 29, 2011, listing an effective move-out date of January 31, 2012. The Notice was served on the tenant via personal delivery on February 1, 2012.

Analysis

Section 47 (2) of the Residential Tenancy Act (the "Act") states that a Notice to end a tenancy for cause must end the tenancy effective on a date that is no earlier than one month after the date the notice is received and the day before the day rent is payable. For purposes of this requirement, the landlord was required to serve her Notice no later than December 30, 2011, for her effective listed move out date of January 31, 2012.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy and therefore has the burden to serve documents which comply with the requirements of the *Act* and are clear and understood by the respondent.

In this case, the landlord listed a move out date earlier than the date the Notice was served on the tenant, which I find invalidates the Notice.

I do not find that section 53 of the *Act* allows me to rehabilitate the Notice, as argued by the landlord.

Conclusion

Based on the aforementioned, I grant the tenant's application and I find the 1 Month Notice to End Tenancy for Cause dated December 29, 2011, issued by the landlord after the listed effective move out date, to be invalid and of no force or effect, and it is therefore cancelled. This tenancy is to continue until it may otherwise end under the *Act*.

As I find that the tenant's application had merit, I allow the tenant recovery of the filing fee of \$50.00.

The tenant is allowed to withhold \$50.00 from the next or a future month's rent payment, in satisfaction of his monetary claim.

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: February 22, 2012.

Residential Tenancy Branch