



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, AS

Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for an end to this tenancy for cause and an Order of Possession pursuant to section 55. The tenant applied for an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

Preliminary Issues

The tenant did not attend this hearing, although I waited until 9:50 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, **in the absence of any evidence or submissions from the tenant/applicant, I order the tenant's application dismissed without liberty to reapply.**

The landlord testified that he handed the tenant a 10-Day Notice to Terminate a Tenancy Early on January 24, 2012, a copy of which he entered into written evidence. He first said that he handed a copy of his dispute resolution hearing package to the tenant on January 24, 2012. As this seemed unlikely, given that the Residential Tenancy Branch (the RTB) did not prepare a notice of hearing until January 31, 2012, I asked him to clarify his sworn testimony regarding the date when he handed the tenant a copy of his dispute resolution hearing package, including the notice for this hearing. He corrected his testimony at that point, testifying that he handed the tenant a copy of this package on January 31, 2012. I am satisfied that the above documents were served to the tenant.

Issues(s) to be Decided

Did the landlord serve the tenant with a valid notice to end tenancy in accordance with the form required under the *Act*? If so, should this tenancy end for cause and should the landlord be issued an Order of Possession?

Background and Evidence

This periodic tenancy commenced on November 1, 2004. The landlord maintained in his notice to end this tenancy that the tenant had allowed a person to move into the rental unit without first obtaining the landlord's permission. He maintained that he had denied the prospective new roommate's application for tenancy, but received a shelter allowance cheque from the Ministry of Social Development (the Ministry) for one-half of the monthly rent for these premises. The landlord returned the cheque to the Ministry, maintaining that fraud had been committed.

The landlord also claimed in the notice to end tenancy that the tenant was in arrears in her rent by \$520.00.

Analysis

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice." Section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Section 47 of the *Act* establishes similar provisions whereby a landlord may end a tenancy for cause by identifying an effective date to end the tenancy:

*47(2)...(a) not earlier than one month after the date the notice is received, and
(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

Section 47(3) also requires that a one month notice to end tenancy for cause must comply with section 52 of the *Act*.

Section 52 of the *Act* reads in part as follows:

*52 In order to be effective, a notice to end tenancy must be in writing and must...
(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
(c) state the effective date of the notice,*

- (d) *except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) *when given by a landlord, be in the approved form.*

The form that the landlord used to issue the 10-Day Notice was a very old form, Form N7, issued apparently by the Landlord and Tenant Board of Ontario. The reasons for citing this Notice and the details provided in that Notice relate to a mix of issues that are now grounds for issuing a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent in British Columbia. The landlord's application for dispute resolution requested an Order of Possession for Cause, which could only be obtained if the landlord had issued the proper 1 Month Notice to End Tenancy for Cause on the proper RTB form. There are significant differences in the time periods allowed to dispute the notice issued by the landlord and the current 1 Month Notice to End Tenancy for Cause. In addition, the details in the correct forms of the RTB of British Columbia vary considerably from the Ontario notice issued by the landlord with respect to the service of documents, the hearing and the contact information.

Since the landlord failed to use the correct form(s) in his notice to end this tenancy, I find that he has not complied with the statutory requirements established under sections 46(2), 47(3) and 52(e) of the *Act*. I find that landlord's 10 Day Notice is of no effect. For these reasons, I cancel the landlords' notice to end this tenancy.

Conclusion

I dismiss both the tenant's and the landlord's applications for dispute resolution without leave to reapply. I cancel the landlord's January 24, 2012 notice to end this tenancy with the effect that this tenancy continues.

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 21, 2012

Residential Tenancy Branch