



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the hearing the tenant's position was largely communicated by a person assisting the tenant, herein referred to as CL.

Issue(s) to be Decided

Is there a basis to cancel the 1 Month Notice to End Tenancy?

Background and Evidence

Neither party served a copy of the Notice to End Tenancy upon the Branch. CL erroneously believed the Branch had taken a copy of the Notice when the Application was filed. I permitted the parties the opportunity to testify as to the content of the 1 Month Notice.

Both parties testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause (the Notice) dated August 1, 2012 and confirmed that rent is payable on the 1st day of every month; however, the similarities ended there.

CL affirmed that he had a copy of the Notice in front of him. CL described the Notice as having a stated effective date of September 1, 2012 and three reasons for ending the tenancy were identified on the second page. I asked CL to read the reasons as they appeared on the Notice. CL stated he could not read the Notice clearly as he did not have his reading glasses. The tenant did not read from the Notice even though she could hear me on the speakerphone.

The landlord offered to fax me a copy of the Notice and indicated the Notice has a stated effective date of August 31, 2012 and 8 reasons for ending the tenancy are given on the second page of the Notice. I asked the landlord to read the 8 reasons which he did.

The parties also provided a different version of events with respect to service of the Notice.

The tenant stated that she received the Notice, in person, on August 14, 2012.

The landlord testified that he prepared the Notice on August 1 and personally served it upon the tenant the following day, August 2, at the rental unit. He described how the tenant looked the Notice, did not say anything, and then shut the door.

I asked CL when he became aware of the Notice and became involved in assisting the tenant with this dispute. CL replied that the tenant made him aware of the Notice on August 10, 2012.

I noted that the tenant did not file an Application for Dispute Resolution to dispute the Notice until August 24, 2012 and informed the parties that the tenant was outside the time limit for filing a dispute based upon testimony I heard from the landlord and CL.

CL then tried to change his testimony and submitted that he must have erroneously recorded events in his daytimer. CL wanted to proceed with discussing the reasons indicated on the Notice.

I informed the parties that it was unnecessary to hear testimony concerning the reasons for issuance of the Notice as I was satisfied the tenant did not file an Application for Dispute Resolution and provide full particulars of this dispute as required by the Act.

The landlord orally requested an Order of Possession.

Analysis

Where a tenant receives a 1 Month Notice, the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not file to dispute the Notice within 10 days the Act provides that the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

The Act requires that a party that files an Application for Dispute Resolution must provide full particulars of the matter under dispute. The applicant is also required to serve relevant evidence to the Branch and the other party with the Application for Dispute Resolution or no later than five days before the hearing under the Rules of Procedure.

In this case, the tenant did not serve the Branch or the landlord with a copy of the Notice under dispute. I can think of no other more relevant document than the Notice that is under dispute.

Nor did the tenant indicate the Notice was dated August 1 but served upon her much later in filing the Application. Had the tenant received the Notice almost two weeks after it was dated such information would be highly significant in supporting an Application filed more than three weeks after the Notice was issued. Thus, I find the tenant did not provide sufficient particulars to support her position the Notice was served upon her when she stated it was.

Further, the tenant and CL provided inconsistent testimony as to when the Notice was in the tenant's possession. I also found CL less than forthcoming when he stated he had the Notice before him and then upon further enquiry indicated he could not read it without glasses. Therefore, I preferred the landlord's detailed submission as to service of the Notice and the content of the Notice and I found, on the balance of probabilities, that the Notice was served upon the tenant August 2, 2012, as stated by the landlord.

Having found the tenant failed to provide full particulars, relevant evidence, and did not file to dispute the Notice within the 10 day time limit required by the Act I dismiss the tenant's application to cancel the Notice.

Since the tenant is required to pay rent on the 1st day of every month and the landlord served the Notice August 2, 2012 the effective date must be no earlier than September 30, 2012 under section 47 of the Act. Therefore, the effective date is automatically changed to read September 30, 2012 under section 53 of the Act.

Section 55 of the Act provides that where a tenant's application to cancel a Notice to End Tenancy is dismissed and the landlord orally requests an Order of Possession during the scheduled hearing, an Order of Possession will be provided to the landlord. Accordingly, I provide the landlord with an Order of Possession effective at 1:00 p.m. on September 30, 2012 to serve upon the tenant.

To enforce the Order of Possession it must be served upon the tenant.

Conclusion

The tenant's application to cancel a 1 Month Notice has been dismissed. The landlord has been provided an Order of Possession effective September 30, 2012 to serve upon the tenant.

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: September 26, 2012.

Residential Tenancy Branch