



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The tenant confirmed that the landlord's brother, AJ, who assisted her in managing this rental property, handed him the 1 Month Notice on November 13, 2012. AJ also testified that he sent the tenant the 1 Month Notice by regular mail on that date. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on or about November 22, 2012. I am satisfied that both parties received the above documents.

Issues(s) to be Decided

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

Background and Evidence

The parties were both unclear as to when this tenancy commenced. After some discussion, they agreed that this periodic tenancy likely began on or about October 1, 2011. Monthly rent is currently set at \$650.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$325.00 security deposit.

The landlord entered into written evidence a copy of a "Notice to End Tenancy – Residential Unit" on Form #RTO-3 created by the former Residential Tenancy Office (now the Residential Tenancy Branch). This four-page Notice form was apparently current as of November 2005, but has been out of use for some time. In the two pages of this form that the landlord entered into written evidence, the landlord did not check any of the boxes indicating the reasons for seeking a 1 Month Notice to end this tenancy. The landlord indicated on the Details for Giving the Notice section of this form that the landlord was seeking an end to this tenancy because the tenant had significantly interfered with safety of owner and management and had made a significantly verifiable threat. At the hearing, AJ stated that he had included an

attachment to the Notice to End Tenancy, although this attachment does not seem to have been included in the landlord's written evidence package.

Analysis

Section 47 of the *Act* establishes the grounds by which a landlord may end a tenancy for cause by issuing a notice to end tenancy. Section 47(3) reads as follows:

(3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

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

Form and content of notice to end tenancy

52 *In order to be effective, a notice to end a 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.

Based on the landlord's oral and written evidence and that of her witness, I find that the landlord did not comply with the requirements of sections 47(3) and 52(e) of the *Act* by issuing the notice to end tenancy on an outdated version of the form. Even if I were to have accepted the validity of the landlord's notice, the landlord failed to complete the form in a way that would comply with the requirements of section 52(d) of the *Act*.

I find that the landlord has served a form of Notice to End Tenancy that is not in accordance with the *Act* and I therefore allow the tenant's application to cancel the Notice to End Tenancy.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice issued on November 13, 2012, 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: January 02, 2013

Residential Tenancy Branch

