



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, O, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated November 26, 2012, served by posting it on the tenant's door on November 29, 2012, and purporting to be effective on December 31, 2012.

Both parties were present. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the parties were also permitted to present affirmed oral testimony and make submissions during the hearing.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that:

- *the tenant is repeatedly late paying rent*
- *the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant*
- *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord*
- *the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent*

Preliminary issues

Effective Date of Notice

At the outset of the hearing the issue of the effective date of the notice was discussed. The Act states that a Notice under section 47 must end the tenancy

effective on a date that is: (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. In this case I find that the rent was due on the first day of each month.

The One-Month Notice to End Tenancy for Cause was posted on the tenant's door and I note that section 90 of the Act provides direction for when a document is deemed to have been served, as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached; (my emphasis)

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

A Notice posted on the tenant's door on November 29, 2012, would be deemed to be received on December 1, 2012. With respect to a One-Month Notice served to the tenant on December 1, 2012, I find that the earliest date that this tenancy could be ended would be January 31, 2013.

Section 53(1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Subsection (2) provides that, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Based on the above, I find that the landlord's notice must be amended to show January 31, 2013 as the effective date.

Service of Respondent's Evidence

The applicant tenant had served the Application and documentary evidence on the landlord by registered mail and the landlord confirmed receipt of this material.

The landlord had submitted two different evidence packages, which were received to the file at Residential Tenancy Branch prior to the hearing. However, the tenant testified that he received the first package on December 3, 2012 and did not receive the second package at all.

Residential Tenancy Rules of Procedure, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. I find that the applicant tenant did comply with this requirement.

Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

The "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "***at least***" then the first and last days must be excluded, and if served on a business, it must be served on the previous business day. Weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

I find that, the landlord's evidence was served to the RTB on time but was not served on the tenant at least 5 days prior to the hearing. Accordingly, the landlord's documentary evidence was excluded from consideration. However, the landlord was permitted to give verbal testimony and the tenant was granted the opportunity to respond verbally.

Evidence

Both parties presented their evidence and gave testimony. After a mediated discussion the parties reached a mutual agreement containing the following terms:

1. The parties agree that the current tenancy agreement will no longer exist as of June 30, 2013 and the landlord will be issued an enforceable Order of Possession, ending the tenancy effective on that date.
2. The tenant has committed to paying the rent in full each month on or before the first day of each month will not pay the rent late in future.

3. For the duration of the tenancy, the tenant will have access to the back section of the lower suite where his possessions are currently stored and will also have emergency access to the front section of the lower suite.

Based on the agreement reached by the parties, I hereby issue an Order of Possession in favour of the landlord effective at 1:00 p.m. on Sunday June 30, 2013. The Order of Possession will be served on the tenant and enforced if necessary pursuant to the above mutually agreed-upon terms

Conclusion

The parties consented to end the tenancy on mutually agreed-upon terms and an Order of Possession is granted to the landlord based on this.

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 10, 2013

Residential Tenancy Branch

