



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

CLARIFICATION REQUEST

The landlord is requesting that I, the Arbitrator, clarify my Decision and Reasons made on May 16, 2013. She states that she consulted with an officer in the Residential Tenancy Branch who had informed her that she should have been entitled to an Order of Possession as she had issued three Notices to End Tenancy for unpaid/late payment of rent.

RTB-136

The Decision found that she had reinstated the tenancy by continuing to accept rental payments after the Notice to End Tenancy was issued without limiting them to “use and occupancy only” and she disagrees with this finding as she said her Notice to End Tenancy was based on late payment of rent over three successive months and this kind of Notice is not invalidated by continuing to accept rent without these limiting terms.

LEGISLATION AND POLICY:

The *Residential Tenancy Act* (the Act) gives arbitrators the power to clarify a decision or order, correct a typographical, arithmetical or other similar error, or deal with an obvious error or inadvertent omission in the decision, order or reasons as follows:

78(1) Subject to subsection (2), the director may, with or without a hearing,
78(1) (a) correct typographic, grammatical, arithmetic or other similar errors in his or her decision or order,
78(1) (b) clarify the decision or order, and
78(1) (c) deal with an obvious error or inadvertent omission in the decision or order.

78(3) The director must not act under this section unless the director considers it just and reasonable to do so in all the circumstances.

Clarification of an arbitrator’s order or decision under the Legislation may be requested if a party is unclear about or does not understand the arbitrator’s decision, order or reasons. “Clarification” allows the arbitrator to explain, but not to change, the decision. Clarification involves making the order or decision more clear or plain to the understanding, and the removal of any complexity, ambiguity, or obscurity.

FINDINGS:

Title

The landlord states she is requesting clarification as a result of some advice she received from the office of the Residential Tenancy Branch. She believes she is entitled to an Order of Possession based on repeated late payment of rent and gave the office this information.

I find that while the landlord may have intended to give a Notice for repeated late payment of rent, the evidence was that she did not. She gave a Notice for unpaid rent under section 46 as evidenced by her Notice dated April 14 to be effective April 26, 2013 and by her lawyer's letter dated April 12, 2013 and as stated in her Application for Dispute Resolution. Under this kind of Notice, the tenancy may be reinstated by a landlord continuing to accept rent without limiting her acceptance to "use and occupancy only". I found the conduct of the tenant assumed the tenancy was continuing as they assumed they had the right to deduct money from rent. The landlord enclosed RTB-124 Fact Sheet in which this principle is clearly explained. It is also set out in the Policy Guideline 11-1.

Although the landlord may have good cause to terminate the tenancy under section 47 for repeated late payment of rent, I find I cannot change my decision and issue her an Order of Possession as she did not give the correct one month notice to end the tenancy for this cause. I note the landlord may legally issue a section 47 Notice now or at any time if she has good cause to end the tenancy. This Notice must give a full rental month's notice to the tenant; for service requirements I advise the landlord to read sections 47(2), 88 and 89 of the Act.

While the landlord writes further in her letter concerning the renovations and other issues, I find she is restating the case which was dealt with in the hearing. I find her

main issue requiring clarification is her contention that she was entitled to an Order of Possession based on a Notice which she mistakenly thought she had given for repeated late payment of rent and I have dealt with this above.

I find that the decision of May 16, 2013 is clear and unambiguous, it was based on the weight of the evidence provided and I decline to clarify it further.

July 18, 2013