



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 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, to make submissions and to cross-examine one another.

Preliminary Matters- Service of Documents

The landlord testified that on May 27, 2013, he posted the 1 Month Notice dated May 30, 2013, on the tenant's door. Although he testified that he had a witness to his posting of this 1 Month Notice on the door on that date, he did not provide any written evidence from the witness. The landlord's witness did not attend this hearing. The tenant testified that he first learned of this 1 Month Notice when he found it lying on the floor near the door to his rental unit (Unit B of this 6-unit rental building) on June 10, 2013. I am satisfied that the landlord served the 1 Month Notice to the tenant.

The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail on June 13, 2013. The tenant entered into written evidence and sworn testimony copies of the Canada Post Tracking Receipt for this registered mailing. The tenant testified that this package was returned to him as unclaimed by Canada Post. He maintained that the landlord has made a practice of avoiding the service of the tenant's documents to the landlord during this tenancy. The tenant's application to cancel the 1 Month Notice was approved by an Arbitrator in her July 15, 2013 decision, when the landlord did not attend the July 10, 2013 hearing of the tenant's application.

The landlord gave sworn testimony to reiterate the claim he submitted in his application for review of a July 15, 2013 decision of the Arbitrator. He testified that he never received notification from Canada Post that a registered letter had been sent to him. He stated that he had reported the tampering with his mail that had occurred to the local police department. He was uncertain as to who had taken the notice from his mailbox.

The landlord's application for review of the July 15, 2013 decision was approved by another Arbitrator on August 12, 2013, leading to the current review hearing. In the interim, the initial Arbitrator's decision to cancel the 1 Month Notice was suspended pending the outcome of the current hearing.

After having his application for review of the July 15, 2013 approved, the landlord was tasked with serving the tenant with the Notice of Dispute Resolution for this hearing, along with the written evidence that gave rise to the landlord's successful application for review of the July 15, 2013 decision. The landlord's agent (the agent) testified that a representative of her company handed the Notice of Dispute Resolution hearing to the tenant at 3:30 p.m. on August 23, 2013. While the tenant confirmed that he had been provided with a copy of the Notice of Dispute Resolution hearing on August 23, 2013, as stated by the agent, the tenant denied having received any written evidence from the landlord with that Notice. The landlord then testified that he had provided this written evidence to the tenant a number of times during the other dispute resolution hearings for this tenancy.

I am satisfied that both parties were notified of this hearing and were prepared to address the issues submitted in the tenant's application and the landlord's 1 Month Notice at this hearing.

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? Should any other Orders be issued with respect to this tenancy?

Background and Evidence

There have been many hearings of applications for dispute resolution by the parties since this tenancy began in March 2012. Two additional hearings are already scheduled before the end of October 2013. In her August 12, 2013, the second Arbitrator provided a detailed review of four of these hearings (i.e., January 21, 2013, May 10, 2013, May 30, 2013, and June 18, 2013). Most of those hearings, as was the situation before the second Arbitrator included applications to cancel 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices). Some of these hearings and decisions also included applications for monetary awards and to reduce monthly rent to take into account a lack of repairs and for services and facilities that were not being provided by the landlord in accordance with the *Act* or the tenancy agreement.

The current application and another have been the subject of successful applications for review of the original decisions. One of these review hearings has been scheduled for

October 22, 2013 and another application to cancel a 10 Day Notice has been scheduled for October 8, 2013.

Although it would appear that the original tenancy was between the landlord and a second person identified on the 1 Month Notice, (MI), for Units "A" and "B", the parties agreed that the tenant only resides in Unit "B" of this two storey rental building. The landlord said that the tenant has effectively "taken over" Unit A, which has a separate locking door, but shares common areas with this tenant in Unit B (i.e., shared bathroom and kitchen).

As the issues involving the required rent and the record of rent payments are scheduled to be heard by other Arbitrators under the *Act*, I have focussed solely on the tenant's application to cancel the landlord's 1 Month Notice, the only issue duly before me.

Analysis

A landlord serving a notice to end tenancy must do so using the correct form and content as set out in section 52 of the *Act*, which reads as follows:

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...

As discussed with the parties at the hearing, I find that there are serious deficiencies in the landlord's 1 Month Notice.

The landlord testified that he posted the 1 Month Notice on the tenant's door on May 27, 2013, but post-dated this Notice to May 30, 2013. Based on my understanding of the landlord's sworn testimony, it would seem that he purposefully placed an incorrect date on the 1 Month Notice, so as to take into account the deemed service date of May 30, 2013 that would result from posting that Notice on the tenant's door on May 27, 2013. Section 53 of the *Act* allows me to correct an incorrect effective date of the notice, as

was necessary with respect to this 1 Month Notice, which wrongly identified July 27, 2013 as the effective date for the Notice. However, the *Act* does not enable me to correct a glaring error in the date of the landlord's actual signing of the notice, a date that followed the actual service of the notice to the tenant.

The landlord's 1 Month Notice also identified MI as one of the tenants when a May 10, 2013 decision of an Arbitrator had conclusively determined that MI was no longer a tenant in this rental building and had not been for some time. In her May 31, 2013 decision, the Arbitrator remarked that "at a previous Hearing on May 10, 2013, the Arbitrator found that the Landlord does not have a tenancy agreement with MI for either 'A' or 'B'". The landlord's inclusion of MI on the 1 Month Notice, despite his receipt of at least two binding decisions stating that she was no longer a tenant, also presents problems for the accuracy of the 1 Month Notice.

In addition to the incorrect inclusion of MI in the landlord's 1 Month Notice, the landlord has also described the rental unit subject to his 1 Month Notice as both units "B" and "A". In addition to the May 10 and May 31, 2013 decisions confirming that this tenancy only involves the tenant in this application who resides in Unit B, the second Arbitrator in her August 12, 2013 included the following very clear statement:

...The landlord raised the issue of whether the tenant occupies rental unit A or B, or both. On his application the tenant indicated that the rental unit in question is unit B. In a decision dated May 13, 2013, the arbitrator found that the tenant occupies unit B only. As this issue has already been determined, I find that it is res judicata and not open to me to alter that finding. The tenant is only a tenant of unit B...

Despite clear findings that this tenancy involves only Unit B, the landlord once more asked for an Order of Possession for both Units A and B at this hearing. In addition to the deficiencies noted above with the landlord's 1 Month Notice, I find that the landlord has not accurately described the tenant's rental unit and has included both an area of the building and a tenant who have no relevance to this tenancy as defined by previous final and binding decisions of Arbitrators appointed under the *Act*.

For the reasons outlined above, I find that the landlord's 1 Month Notice does not comply with many of the requirements of section 52 of the *Act*. Section 53 of the *Act* allows me limited ability to correct certain errors, including some of those present in the landlord's 1 Month Notice. However, I find the magnitude of the errors in the 1 Month Notice such that I cannot consider the landlord's request to end this tenancy on the basis of what I find to be a fundamentally flawed 1 Month Notice. As I find that the landlord has not complied with the requirement to adhere to the Form and Content of

the 1 Month Notice, I allow the tenant's application to cancel the 1 Month Notice. This tenancy continues.

In accordance with the *Act*, I am allowed to issue orders with respect to issues in dispute during a tenancy so as to clarify matters in contention and enable the parties to proceed without having to initiate further applications for dispute resolution. In this regard, I note that both parties agreed that this tenancy involves only Unit B. Both parties confirmed that the tenant does not occupy Unit A and that Unit A is currently vacant. To avoid the landlord's persistent practice of including Unit A in future notices to end tenancy or in applications for dispute resolution, I order that the landlord is given immediate possession of Unit A. I am issuing an Order of Possession to that effect, which is a separate and discrete rental unit in this rental property and which the landlord has every right to access while it remains untenanted.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. This tenancy continues.

The landlord is provided with a formal copy of an Order of Possession for Unit A in this rental building granting the landlord an immediate right of possession to Unit A. This Order remains in force until another tenant takes possession of Unit A, at which time the landlord is required to yield vacant possession of Unit A to that new tenant in accordance with the terms of the tenancy agreement entered into between the landlord and the new 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 23, 2013

Residential Tenancy Branch