



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF
 CNC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords and the Tenant. The Landlords applied for an Order of Possession based on a notice to end tenancy for cause, and to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy for cause, and to recover the filing fee from the Landlords.

The Landlords appeared for the hearing but only the female Landlord provided affirmed testimony during the hearing. The Tenant also appeared for the hearing with a legal advocate; the Tenant provided affirmed testimony and the legal advocate made submissions for the Tenant.

Preliminary Issues and Findings

The Landlord submitted at the start of the hearing that she was not aware that the Tenant was allowed to have an advocate for this hearing. The Landlord was then informed of Rule 8.3 of the Residential Tenancy Branch Rules of Procedure which state:

“A party to a dispute resolution proceeding may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.”

[Reproduced as written]

The above information is also detailed in the Dispute Resolution Process fact sheet which was provided to the Landlords when they made the Application.

The Tenant made her Application on March 6, 2015 and the Landlord confirmed receipt of this by personal service on March 10, 2015. The Landlords made their Application on

March 13, 2015 for their issues to be dealt with through the Direct Request Proceedings.

However, the Landlord was informed by the Residential Tenancy Branch that the Direct Request Proceedings were reserved for notices to end tenancy for unpaid rent and not for notices to end tenancy for cause. Therefore, the Landlord completed the correct documents and served these to the Tenant on March 23, 2015 by personal service. The legal advocate confirmed receipt of the Landlords Application within three days of the Landlord being issued with the paperwork by the Residential Tenancy Branch. Therefore, I find that there were no service issues of the Application and the parties' documentary evidence for me to deal with at the start of the hearing.

Before the hearing commenced, the legal advocate submitted that the notice to end tenancy for cause was invalid and illegal because it did not indicate the reason for ending the tenancy. Therefore, I first turned my mind to the notice to end tenancy.

The Landlord testified that she had served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") dated March 2, 2015 by posting it to the Tenant's door on March 3, 2015. Two different versions of the Notice were provided into written evidence by the parties.

The legal advocate submitted that the Notice indicated no reason for ending the tenancy on the second page. In support of this the Tenant provided a copy of the Notice and the second page shows blank with no markings or tick boxes selected for the reasons for ending the tenancy.

The legal advocate explained that as the Tenant was not put on notice of why the tenancy was being ended, the Tenant disputed the Notice straight away after receiving it on her door on March 6, 2015. The legal advocate pointed out that it was only when they received the Landlords' Application did they see that the Landlord was applying to end the tenancy based on repeatedly late payment of rent and that this reason had been ticked off by the Landlord on the second page of the Notice. The Tenant's legal advocate submitted that the Landlord had ticked off this box **after** serving the Tenant with the Notice and provided the amended copy into written evidence; the legal advocate also pointed to handwritten notes the Landlord had made on the second page which were also not present on the copy the Landlord has served to the Tenant.

The Landlord insisted that she had ticked off the 'repeatedly late paying rent' box on the second page of the Notice **before** it was served to the Tenant. This was again disputed by the Tenant. When the Landlord was asked about the handwritten notes and various

underlined and circled text that appeared on the second page of the Landlord's copy of the Notice, the Landlord stated that she did not know what I was talking about; the Landlord testified that she did not have a copy of the Notice she had to the Residential Tenancy Branch in front of her. The Landlord could offer no further explanation for the discrepancies that appeared on the Notice provided by the parties.

The legal advocate pointed out that after the Tenant was served with Landlords' Application they then proceeded to submit evidence in relation to the rent payments made during the tenancy.

The Landlord testified that the Tenant had been served with a breach letter dated February 4, 2015 by posting it to the Tenant's door. The letter informed the Tenant that her rent was payable on the first of each month and that any further late rent payments will result in a notice to end tenancy. The Landlord submitted that the Tenant had been repeatedly late paying rent.

The legal advocate confirmed that the first time they were learning of this breach letter claimed to be served by the Landlord, was when it was provided into written evidence for this hearing which was served with the Application. The Tenant denied being served with this breach letter on February 4, 2015.

Before, I am able to make findings on the reason for ending the tenancy; I must first determine whether the Tenant was served with a legal and valid Notice. Section 52(d) of the *Residential Tenancy Act* (the "Act") requires that a notice to end tenancy served by a Landlord must state the grounds for ending the tenancy.

On this occasion, I am not convinced by the Landlord's evidence that the Tenant was served with a Notice that stipulated that the tenancy was being ending for repeatedly late payment of rent. I base this finding on the fact that the Landlord had provided a second page of the Notice that contained amendments (underlined and circled text, and handwritten notes), which do not appear on the Tenant's copy of the same Notice. The Landlord was unable to explain these additions that had been made in the Landlord's copy of the Notice. Therefore, I find the legal advocate's submission that the Tenant was served with a Notice that did **not** contain the reason for ending the tenancy has merit and is plausible.

The Landlord was unable to prove and satisfy me that the Tenant had been issued with the breach letter for repeatedly late rent payments prior to the Notice being served to the Tenant. Therefore, there is not sufficient evidence before me to suggest that the Tenant knew or should have known the information that was omitted from the Notice.

Therefore, pursuant to Section 68(2) (b) of the Act, I find the Notice did not comply with Section 52 of the Act and is therefore cancelled. The tenancy will continue until it is ended in accordance with the Act. As the Tenant has been successful in cancelling the Notice, pursuant to Section 72(2) (a) of the Act the Tenant may recover the \$50.00 filing fee by deducting it from a future installment of rent.

The parties provided some submissions in relation to rent payments made during the tenancy; however, as I determined that the Notice is to be cancelled, I did not make any legal findings in relation to rent payments made during the tenancy. However, I did caution the Tenant regarding her requirement to pay rent on time during the tenancy as well as the provisions outlined in Policy Guideline 38 to the Act which provides further guidance on this topic.

I also offered the parties a chance to settle the issues contained within the Applications through mutual agreement; however, despite a small discussion, the parties were unable to reach consensus.

Conclusion

The Tenant has been issued with a Notice that did not comply with the Act. Therefore, the Notice dated March 2, 2015 is hereby cancelled and the tenancy will continue until such time it is ended in accordance with the Act. The Tenant may recover her filing fee through her next installment of rent.

The Landlords' Application is dismissed.

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: April 13, 2015

Residential Tenancy Branch

