



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on March 9, 2016. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause.

The hearing was conducted via teleconference and was attended by the Landlord; the Landlord's Witness; the Tenant; the Tenant's Advocate; and the Tenant's Witness. Each person who submitted evidence gave affirmed testimony.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the Tenant's evidence submissions. No issues were raised regarding service or receipt of that evidence.

As of the start of this hearing no evidence had been received on the Residential Tenancy Branch (RTB) file from the Landlord. The Landlord stated his evidence, which consisted of letters from his witness, was submitted to the RTB three days prior to the hearing. The Landlord argued he had no previous experience with the RTB and was not aware of the evidence timelines

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the

applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added by underlining and bold text].

To consider documentary evidence that was not served upon the other party or the RTB in accordance with the Rules of Procedure would be a breach of the principles of natural justice. Therefore, as the Landlord's evidence was not served upon the Tenant or the RTB in accordance with Rule of Procedure 3.15, and was not before me during the hearing, I declined to consider that documentary evidence. I did however consider the Landlord's oral testimony.

The Tenant stated his Witness would be submitting evidence regarding an argument which involved the Landlord's witness. After further clarification was obtained from the Tenant I determined the Tenant's Witness's testimony was not relevant to the issues before me involving the 1 Month Notice to end tenancy. As a result I did not hear evidence from the Tenant's witness.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the 1 Month Notice to end tenancy issued February 29, 2016 be cancelled or upheld?

Background and Evidence

The Tenant entered into a verbal month to month tenancy agreement which began in November 2014. The Tenant is required to pay rent of \$375.00 plus \$25.00 for utilities on or before the first of each month. In November 2014 the Tenant paid \$200.00 as the security deposit.

The rental unit was described as being a 4 bedroom home. Each bedroom is rented separately to "tenants in common" who share the common areas of the house including the kitchen, bathroom, and living spaces.

The parties attended a previous dispute resolution hearing on November 5, 2015. A Decision was rendered on November 5, 2015 which states:

It is also evident that since the start of the tenancy the tenant has been parking his vehicle and a trailer on the premises without comment or complaint from the landlord. It was my view at the hearing that such parking would be considered as part of the tenancy.

The tenant has or wishes to bring an additional trailer onto the property. As he shares the home and yard with other tenants, it is common property between

them. He is not entitled to use any portion of it for his own purposes without the landlord's agreement.

Thus, the tenant must negotiate for the landlord's consent for him to bring a second trailer onto the property.

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The Tenant confirmed receipt of the 1 Month Notice issued February 29, 2016 pursuant to Section 47(1) of the Act listing an effective date of March 31, 2016 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The Landlord testified he issued the Tenant the 1 Month Notice for the following reasons: the other tenants are complaining the Tenant leaves food in the fridge which smells and is unhealthy; the Tenant has left food on the heater causing the rental unit to fill with smoke; the Tenant has placed tea in the oven to dry; the Tenant has brought a trailer onto the property without the Landlord's permission; and the Tenant has placed a second trailer on the neighbour's property and is using the Landlord's power for that trailer.

The Landlord's witness (the Witness) testified he is the main tenant who assists the Landlord in finding replacement tenants when a bedroom becomes vacant. He stated he also informs the Landlord of any issues with the property or a tenant.

The Witness stated the Tenant was being evicted because he parked a trailer on the neighbor's property and has allowed some homeless person and his girlfriend to live in that trailer. He argued that the trailer has no power or sewer hookups.

The Witness asserted he sees those people who live in that trailer in the morning when he goes to work. He testified the property where the Tenant's second trailer was parked was owned by someone other than the Landlord and that owner wants the trailer moved.

Each person was given the opportunity to question the Witness. When asked if that trailer had an extension cord to get power from the Landlord's house the Witness answered, "no, there is no power and no sewer hooked up to that trailer". When asked if the house had smoke detectors the Witness answered "yes, there are two smoke detectors; one upstairs and one downstairs."

The Witness argued the Tenant makes a mess and the other tenants have to clean it up. He asserted the Tenant is involved in really “weird stuff” and has been seen looking into windows at night with a flashlight.

The Tenant testified the 1 Month Notice was slid under his door, as per his photographic evidence. The Tenant pointed to evidence he had obtained from the RTB website regarding service methods and argued the Notice should be considered void because it was not served in a proper manner. The Tenant confirmed he received the Notice when he found it on his floor.

The Tenant confirmed he had been away from the rental unit while on vacation and that absence was longer than he had originally planned. He stated he was gone for a few weeks and had left food in the fridge which had spoiled. He also confirmed he had burnt his onion rings while attempting to re-heat them on the toaster oven and he had dried out his tea in the oven. The Tenant asserted that although there was a burnt smell in the house from the onion rings, the house never filled up with smoke during any of his cooking and the smoke detectors did not go off. He asserted the house filled with smoke when another tenant in common had burnt his food.

The Tenant argued the matters relating to his first trailer and payment of rent were decided in the November 5, 2015 hearing. He confirmed that he may have previously run an extension cord from the rental house to his first trailer. He stated that he now uses that trailer as storage for his possessions.

The Tenant alleged that he was being evicted because of differences he has with the Witness.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 88(g) of the *Act* stipulates all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person may be given or served by attaching a copy to a door **or other conspicuous place at the address at which the person resides** or, if the person is a landlord, at the address at which the person carries on business as a landlord [my emphasis added by bold text].

Information provided on the RTB website or in publications such as fact sheets is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position and is not intended to be findings of fact or law.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act. Notwithstanding the Tenant's submission that service by sliding a notice under a door is not valid based on information posted on the RTB website, I find, pursuant to section 62(2) of the Act, the 1 Month was served in accordance with section 88(g) of the Act. I make this finding in part as the floor inside the Tenant's rental unit can be considered a conspicuous place at the address at which the person resides. Furthermore, it was undisputed that the Tenant received the Notice after it was slid under his door.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

Res judicata is a doctrine that prevents rehearing of claims and/or issues arising from the same cause of action, between the same parties, after a final judgment was previously issued on the merits of the case.

I declined to hear the matters regarding the Tenant's first trailer, his vehicle, and the amount of the Tenant's rent, as those issues were decided upon in the November 5, 2015 Decision. To rehear those issues now would constitute res judicata, as defined above.

Section 2 of the *Residential Tenancy Act* provides jurisdiction regarding issues between a landlord and tenant and possession or occupation of a landlord's rental property.

The matters regarding the Tenant parking his second trailer on a piece of civic property not owned by the Landlord and which does not form part of the Tenant's tenancy agreement, does not fall under the jurisdiction of the *Residential Tenancy Act (the Act)*. Accordingly, I declined to hear the issues regarding the Tenant's second trailer parked on the neighbor's property, as those issues must be determined by a court of competition jurisdiction.

After consideration of the above, I find there was insufficient evidence to prove the reasons listed on the 1 Month Notice issued February 29, 2016 based on the remaining issues of the Tenant leaving food in the fridge; burning his onion rings in the toaster oven; or drying tea in the oven. Accordingly, I uphold the Tenant's application and the 1 Month Notice issued February 29, 2016 is hereby cancelled and is of no force or effect.

Conclusion

The Tenant was successful with his application and the 1 Month Notice issued February 29, 2016 was cancelled.

This decision is final, legally binding, and 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 25, 2016

Residential Tenancy Branch