



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by its agent. The landlord elected to call two witnesses. The tenant CC (the tenant) appeared on behalf of both tenants. The tenant was represented by an advocate.

The landlord admitted service of the dispute resolution package.

Preliminary Issue – Landlord's Evidence

The agent initially testified that she served the tenant with landlord's evidence on 8 July 2016. The agent then testified on cross examination that the tenant was served on 11 July 2016. The tenant testified that he received the landlord's evidence on 15 July 2016.

The tenant's advocate submitted that the landlord's evidence was submitted late. The tenant's advocate incorrectly referred to a fourteen day deadline. This is not the rule that applies to respondents. The rule applicable to respondents is rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* (the Rules), which provides that the respondent's evidence must be received at least seven days prior to the dispute resolution hearing. The tenant submits that because of the late service, he was unable to respond to certain allegations contained therein. For the reasons that follow, it was not necessary for me to rely on any of the evidence contained in the landlord's evidence. For this reason, I make no determination on the admissibility of the landlord's evidence.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The tenants have resided in the residential property for over two years. On or about 1 January 2016, the tenants moved to the rental unit. Monthly rent in the amount of \$750.00 is due on the first.

On 30 May 2016, the landlord served the 1 Month Notice to the tenants by personally delivering the notice to the tenant. The 1 Month Notice set out an effective date of 30 June 2016.

The tenant testified that he received only one 1 Month Notice. The tenant provided a copy of the 1 Month Notice. That notice is not signed or dated by the landlord or its agent. On the second page the section titled "details of the cause" is left blank. The tenant testified that he did not receive any covering letter with this 1 Month Notice.

The agent CK agreed that she served the 1 Month Notice for which the tenants admit service. The agent CK testified that she served a second 1 Month Notice that she signed and dated 30 May 2016. On the second page the section titled "details of the cause" is left blank. This explanation was provided after the tenant's testimony on the topic and was not raised in the first instance.

The agents CK, MC and testified that the main complaints relate to the tenants changing the locks on the rental unit, minor guests, conflicts with staff, damage to the residential property, smoking in common areas, . The agent CK testified that the tenants are believed to be involved in trafficking controlled substances.

Analysis

The tenant testified that the tenants only received one 1 Month Notice. The agent CK submits that she served a second notice that included her signature and a date. There is no corroborating evidence for either version of events.

Where there are conflicting versions of an event and no corroborating evidence for either, I am required to make a finding of credibility. In this case, I prefer the evidence of the tenant. In particular, the late explanation regarding the second 1 Month Notice by the agent was problematic. Further, the tenant was consistent on cross examination that he had only received one 1 Month Notice. For these reasons, I prefer the tenants' version of events and find that the tenants were only served with the undated 1 Month Notice.

Section 47 of the *Act* establishes how a landlord may end a tenancy for cause. Subsection 47(3) of the *Act* requires that "a notice under this section must comply with section 52".

Section 52 of the *Act* reads as follows:

52 In order to be effective, a notice to end 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.

Since the landlord failed to sign and date its notice, the landlord has not complied with the statutory requirement established under paragraph 52(a) of the Act. This date is important for determining the earliest effective date of the 1 Month Notice

Further, the landlord did not include any details on the 1 Month Notice. By necessary implication, the direction to use the approved form in paragraph 52(e) of the Act, includes a requirement to fill out the necessary information in the form. In order for the tenant to meaningfully respond to the 1 Month Notice he must be given notice of the allegations against him. By failing to complete the form as directed, the landlord has not properly used the approved form. This failure goes to the purpose of the requirement in paragraph 52(e) of the Act.

As the landlord failed to comply with the form and content requirements of section 52, I allow the tenants' application to cancel the landlord's 1 Month Notice.

I make no findings on the underlying reasons for cause. Nothing in this decision prevents the landlord from issuing a subsequent 1 Month Notice that meets the form and content requirements of section 52 of the Act.

Conclusion

The tenants' application is granted. The 1 Month Notice is of no force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 25, 2016

Residential Tenancy Branch