



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 2 Month Notice to End Tenancy for Landlord's Use. Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified.

Issue(s) to be Decided

Is the 2 Month Notice to End Tenancy for Landlord's Use dated August 21, 2016 valid?

Background and Evidence

This month-to-month tenancy commenced more than five years ago. At the present time the monthly rent is \$500.00 and is due on the first day of the month. The landlord holds a security deposit of \$275.00.

On August 21, 2016 the landlord issued and served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use.

The tenant filed the notice as evidence. The back page of the form has not been completed.

When asked about this the landlord testified that after the tenant filed for dispute resolution he came and spoke to them and pointed out that page 2 of the form had not been completed. She testified that her husband corrected the notice and gave a copy to the tenant. She said their copy of the notice was properly completed. The tenant testified that he never talked to the landlord's husband and he was never given a corrected notice to end tenancy.

Analysis

Section 52 of the Residential Tenancy Act states that in order to be effective a notice to end tenancy given by a landlord must include, among other things, the grounds for ending the tenancy.

Section 53 allows an incorrect move-out date to be automatically corrected.

Section 68 allows an arbitrator to amend a notice to end tenancy if satisfied that:

- the person receiving the notice knew, or should have known, the information that was omitted from the notice; and,
- it is reasonable, in the circumstances, to amend the notice.

As explained in in *Residential Tenancy Policy Guideline 11: Amendment and Withdrawal of Notices* in determining whether a person “should have know” particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is “reasonable in the circumstances” an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

This section is often applied if the information omitted from the notice is something like the address of the rental unit which a tenant may be presumed to know. However, a tenant should not be presumed to know – or to guess – which of the many diverse reasons for which a landlord may end a tenancy by serving a 2 Month Notice to End Tenancy for Landlord’s Use, each of which has separate legal requirements, is the one that may apply to his or her tenancy. Further, when a tenancy is being ended for reasons unrelated to the tenant’s behaviour, it is not unreasonable to require the landlord to fill out both pages a simple form. In this rental climate to ignore the requirement to set out the reason for ending the tenancy on the notice is unfairly prejudicial to the tenant.

As to whether the notice was subsequently amended by the landlord’s husband I must consider the following:

The onus of proof on these applications is on the landlord to prove, on a balance of probabilities, all the necessary facts including whether the notice to end tenancy served on the tenant complied with the legislation. When there is only conflicting oral testimony the person alleging a particular fact has not tipped the balance of probabilities in their favour.

The tenant filed the original notice to end tenancy with his application for dispute resolution. It was not possible for anyone to correct it and give it back to him after he had filed it with the Residential Tenancy Branch.

The 1 Month Notice to End Tenancy for Landlord’s Use dated August 21, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with

the *Residential Tenancy Act*. The landlord will have to serve the tenant with a new notice.

The tenant did not pay a fee to file this application so no further order is required.

Conclusion

The 1 Month Notice to End Tenancy for Landlord's Use dated August 21, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*. The landlord will have to serve the tenant with a new notice.

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: October 20, 2016

Residential Tenancy Branch

