



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 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.

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 confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and evidence.

The landlord testified that the 1 Month Notice to End Tenancy for Cause, with an effective date of December 31, 2016 ('the 1 Month Notice') was personally served to the tenant on November 24, 2016. The tenant entered into written evidence a copy of that Notice, which indicated an effective date of December 31, 2016, but is missing the date of service and date signed by the landlord. The tenant did not have an issue with the service of the 1 Month Notice, nor the date of service. Both parties confirmed the 1 Month Notice was served on November 24, 2016. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy is currently on a month-to-month verbal agreement, with monthly rent in the amount of \$875.00, payable on the first of each month.

The tenant entered into written evidence an undated copy of a 1 Month Notice to End Tenancy ('1 Month Notice'). The 1 Month Notice contains an effective date of December 31, 2016, and is a one page, single-sided document.

The tenant testified during the hearing that only one page was submitted as evidence because that is all that she had received from the landlord on November 24, 2016. She testified that the landlord hand delivered her the 1 Month Notice stating that his niece is moving in, and she had to be out of the rental suite by December 31, 2016. She stated that the reason for 1 Month Notice was only given to her orally, and she was never given any additional pages. She also testified that she noticed the 1 Month Notice was not dated, but signed by the landlord. The tenant is requesting the cancellation of the 1 Month Notice as it the tenant claimed that the Notice is invalid as it does not state the reason(s) for the 1 Month Notice, nor is it dated.

Although the landlord disputed the fact that only one page was given to the tenant, he did confirm the reason given to the tenant, testifying during the hearing that he verbally informed her that he would like the suite for his daughter and niece. He also stated that he wanted to "redo the apartment". He noted that the exact words used on the 1 Month Notice was "daughter and niece wish to occupy unit soonest".

He testified that the tenant was not too happy when he served her the 1 Month Notice, and that he believed that since the tenancy was month-to-month, he was only required to give the tenant one month notice to move out. He did acknowledge that the date was missing on the 1 Month Notice. He also testified that he offered the tenant one month's rent as compensation to move out by December 31, 2016, the effective date of the 1 Month Notice.

The landlord further testified that he requested the tenant to sign a mutual agreement to end the tenancy, which she refused.

The tenant continues to reside at the residence, and maintains that only one page was given to her by the landlord, which was the first page of the 1 Month Notice. Both the landlord and tenant confirmed that the tenant has been paying rent on time, and the only issue is with the 1 Month Notice, and the landlord's desire to end the tenancy so his daughter and niece may move in.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good

faith to occupy the rental unit. The landlord states that his daughter and niece intend to occupy the tenant's rental unit.

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

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...

I find that the 1 Month Notice does not comply with section 52(d) of the *Act*, as it does not state the grounds for ending the tenancy. The 1 Month Notice also fails to comply with section 52(e) of the *Act*, as a 1 Month Notice does not satisfy section 49(2) of the *Act*, which requires the landlord to use a 2 Month Notice to End Tenancy if the landlord would like to end the tenancy for the reason that he provided the tenant. The 1 Month Notice is invalid on multiple accounts as I have stated above.

According to subsection 47(4) of the *Act*, the tenant may dispute a 1 Month Notice to End Tenancy by making an application for dispute resolution within 10 days after the date receives the notice. The tenant received the 1 Month Notice on November 24, 2016, and filed her application on November 25, 2016. Therefore, the tenant is within the time limit for seeking cancellation of the 1 Month Notice. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

The landlord's 1 Month Notice to the tenant is clearly deficient on multiple levels, and based on the landlord's own testimony that he would like to end this tenancy for occupancy by his own daughter and niece, the 1 Month Notice is not on the correct form, nor does it satisfy the requirement for the landlord to give at least 2 Month's notice as required by the *Act*.

I find that the 1 Month Notice had no legal effect because it did not comply with the requirements of section 52(d) and (e) of the *Act*, nor does the effective date of December 31, 2016 satisfy the two month minimum requirement for ending this tenancy.

Under these circumstances, I am granting the tenant's application to cancel the 1 Month Notice as I find the Notice invalid on several grounds.

Conclusion

I allow the tenant's application, and the 1 Month Notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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*.

January 10, 2017

Residential Tenancy Branch