



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SALT SPRING and SOUTHERN GULF ISLANDS COMMUNITY SERVICES
SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, ET, FF

Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy for cause dated March 7, 2017.

In the second application the landlord seeks an order of possession pursuant to that Notice and for an early end to the tenancy, as permitted by s. 56 of the *Residential Tenancy Act* (the “Act”).

The tenant did not attend the hearing within twenty five minutes after its scheduled start time. As a result, his application is dismissed. The landlord’s representatives attended and were ready to proceed. As a result, the tenant’s application is dismissed without leave to re-apply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is one of seven bedrooms in a house. Some bedrooms have their own bathroom. Some don’t. Occupants share common areas like the kitchen and living areas. The home is operated by a non-profit society, providing shelter to disadvantaged people.

This tenancy started in July 2015. The current monthly rent is \$375.00. The landlord holds a \$187.50 security deposit.

Ms. L. for the landlord testifies that the landlord has not been served with the tenant's application to cancel the Notice. She learned of the tenant's application only when making her own application on behalf of the landlord.

She testifies that the landlord's application for dispute resolution and the notice of hearing were served on the tenant by slipping a copy of each under the tenant's door on March 27, 2016

Mr. J.L. and Mr. A.H. alluded to the problems the tenant has created while living in the rental unit and to the efforts they have made in the past to let the tenant remain in the premises.

Analysis

The ending of a tenancy is a serious matter. A landlord intending to evict a tenant will be put to strict compliance with the law and to the procedure required by the law.

The Tenant's Application

Whether or not the tenant served the landlord with his application, the landlord became aware of it and attended this hearing to uphold the Notice.

Section 55(1) of the *Act* directs that when a tenant's application to dispute a Notice fails, as here, the landlord must be issued an order of possession. The section reads:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Prerequisite to the issuance of the order of possession is that the landlord's Notice complies with s. 52 of the *Act*. Section 52 states:

- 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,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.**

(emphasis added)

The Notice used by the landlord is not in the approved form. The approved form at the time the landlord issued it was form RTB33 (2016/03). The form the landlord used was from the year 2011 and no longer approved.

Section 68(1) of the *Act* gives the director (and thus an arbitrator) power to amend eviction Notices. It provides:

- 68** (1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
 - (b) in the circumstances, it is reasonable to amend the notice.

The forms are material different from each other. The current approved form contains a new area for completion by the landlord, headed:

DETAILS OF CAUSE(S): Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).

The form of Notice in question here, the old form used by the landlord, did not contain that area. The Notice did not give details of the cause(s) said to justify the tenant's eviction other than to check off the grounds under s. 47 of the *Act* that the landlord relies upon to justify the Notice.

It cannot be determined at this hearing whether or not the tenant knew, or should have known, the details of cause(s), thus permitting the consideration of an amendment to

the Notice under s. 68(1), above. The tenant did not attend the hearing and such a determination, in my view cannot be made based on the evidence or testimony of only one party to the dispute, given in the absence of the other and without prior disclosure.

In this regard it must also be noted that the tenant's application states in the area marked "details dispute" that "I have not been told why to move out . . ." In light of that allegation by the tenant it cannot be assumed that he knew or ought to have known the details of the cause for the Notice.

In result, an order of possession cannot be issued under s. 55(1) simply because the tenant applied to cancel the Notice and his application has been dismissed.

The Landlord's Application

For an Order Pursuant to the Notice

The landlord's Notice is not in the approved form and thus, according to s. 55(1), above, is not effective to end the tenancy. Nor can it be amended, for the reasons stated above.

Secondly, in order to proceed with the landlord's application in the absence of the tenant it is necessary to show that the tenant has been duly served with the application.

Ms. L. for the landlord testifies that she, in the presence of another, served the tenant with the landlord's application by slipping it under the tenant's bedroom door on March 27. That is not a method of service permitted under the *Act*. Section 89(2) sets out how a landlord **must** serve a tenant with an application for an order of possession. It states:

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Slipping a copy of the application under the tenant's door does not meet with any of the mandatory permitted service methods in s. 89(2). An order of possession cannot be issued under this head.

The Landlord's Application for Early Termination of the Tenancy

Section 56(2) of the *Act* permits the issuance of an order of possession in circumstances where the tenant or someone permitted on the premises by him has:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and

it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect. Items (ii) and (iv) B are alleged in this Notice.

It is not necessary for a landlord to issue an official Notice to End Tenancy in order to seek an early termination of the tenancy and so the question of whether or not the landlord has used the "approved form" of Notice is not relevant.

It is however, necessary for the landlord to comply with the service requirements of s. 89(2), above, in order to proceed at the hearing in the absence of the tenant. As outlined above, the landlord has failed to comply with those mandatory service provisions. An order of possession cannot be issued under this head of the claim.

Conclusion

The tenant's application is dismissed without leave to re-apply.

The landlord's application is dismissed. It is free to issue another Notice to End Tenancy in the approved form or to make another application for an early end to the tenancy, with or without having issued another Notice to End Tenancy.

This decision was rendered orally 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 12, 2017

Residential Tenancy Branch