



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*"). The tenants sought:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- a monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant LHY spoke for both co-tenants (the "tenant").

As both parties were in attendance I confirmed service of the documents. The parties confirmed that the landlord served a copy of the 1 Month Notice on the tenant by posting on the rental unit door on or about March 6, 2017. The tenant confirmed receipt of the 1 Month Notice. I find that the 1 Month Notice was served on the tenants in accordance with section 88 of the *Act* and deemed served in accordance with section 90 of the *Act* three days after the date of posting.

The tenant testified that she served the application for dispute resolution dated March 10, 2017 personally on the landlord on the same date. The landlord confirmed receipt of the tenant's application for dispute resolution. I find that the landlord was duly served with the tenants' application for dispute resolution in accordance with section 89 of the *Act* on March 10, 2017.

Preliminary Issue – Amendment to Application

The tenants filed an amendment to the application for dispute resolution on March 27, 2017. While the tenants indicated on the form that the Monetary Claim had changed and the tenants are now seeking a monetary award in the amount of \$1,074.00, there was no monetary claim made in the original application. The tenant testified that her

daughter served the landlord with a copy of the amendment by placing a copy in the landlord's mailbox on March 25, 2017. The landlord disputed having received a copy of the amendment. I accept the tenant's testimony that the amendment to the application for dispute resolution was served in accordance with section 88 of the Act and was deemed served on March 28, 2017, three days after placing in the mailbox. **As there was no application for a monetary award in the tenants' original application, an amendment to the tenants' original application needed to be served in accordance with section 89(1) of the Act. Section 89(1) does not allow for service of an application for a monetary award by leaving a copy in a party's mailbox, as was said to have occurred in this instance. For these reasons, I dismiss the tenants' amended application for a monetary award with leave to reapply, as it was not properly served to the landlord in accordance with section 89(1) of the Act.**

~~The tenants' claim for a monetary award provides little information on why the claim is being made. The tenants list sums without adequate explanation of why they feel the landlord is responsible for their loss or what they represent. The tenants were unable to explain how the claim for a monetary award is related to the original application or the basis for making a claim. The tenants provided little information in writing to support their claim or support the amount they were seeking. Pursuant to Rule 2.3 of the Rules of Procedure, which provides that claims made in applications must be related to one another, I find that the tenant's claim for a monetary award is unrelated to the present claim and not reasonably foreseeable pursuant to Rule 4.2. Consequently, I dismiss the tenant's claim for monetary award without leave to reapply.~~

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The parties were unable to provide much relevant detail about this tenancy. The testimony of the parties focused on allegations and complaints unrelated to the present application.

This tenancy began in October, 2016. The landlord issued an earlier 1 Month Notice to End Tenancy on December 5, 2016. The tenant filed an application for dispute resolution in response and there was a hearing on February 6, 2017 where the parties

entered into an agreement to continue the tenancy. Shortly after the settlement the landlord issued a 1 Month Notice on or about March 6, 2017. Neither the landlord nor the tenants could recall the precise day the 1 Month Notice was served on the tenants. The landlord provided a copy of the 1 Month Notice into written evidence. The copy of the 1 Month Notice is dated April 4, 2017, provides an effective date of April 3, 2017 and is unsigned. The parties confirmed that this was the 1 Month Notice issued in March, 2017.

Analysis

The landlord testified that he served the tenants with a 1 Month Notice on or about March 6, 2017. The copy of the 1 Month Notice submitted into written evidence by the parties is dated April 4, 2017, provides an effective date of April 3, 2017 and is unsigned.

Section 52 of the Act provides in part:

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...

I find that the 1 Month Notice does not meet the form and content requirement of section 52 of the Act as it is unsigned and provides incorrect dates. Consequently, I find that the 1 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the Act.

Conclusion

I grant the tenants' application to cancel the 1 Month Notice. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenants' amendment to the application related to the monetary claim is dismissed ~~without leave to reapply.~~ **with leave to reapply as it was not served to the landlord 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*.

Dated: April 12, 2017

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON April 28, 2017
AT THE PLACES INDICATED IN **BOLD** ON PAGES 2 AND 4.

Residential Tenancy Branch