



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 a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause dated April 5, 2017. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant's application was amended to correct the spelling of his last name.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause dated April 5, 2017 be upheld or cancelled?

Background and Evidence

The tenant has occupied the rental unit for several years, although the parties were uncertain of the exact date his occupancy commenced. The tenant executed a new tenancy agreement starting January 1, 2017 requiring him to pay rent of \$675.00 on the first day of every month for the one bedroom apartment.

On April 5, 2017 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause with a stated effective date of May 31, 2017 (the Notice). The Notice indicates the following reasons for ending the tenancy:

- Tenant or a persona permitted on the property by the tenant has
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property
- Tenant has not done required repairs of damage to the unit.

The space on the Notice that is entitled “Details of Cause” was not completed. Nor was the Notice accompanied by an attached page or document.

The landlord explained that she did not realize she had to complete the Details of Cause section of the Notice and thought it was sufficient to tick the boxes that appear on the second page of the Notice.

The landlord stated that on April 5, 2017 she did orally inform the tenant of the reasons for giving him the eviction notice, which were: that he did not report a water leak and the tenant has not provided enough access for the landlord to make necessary repairs.

The tenant testified that he was given a deadline of April 5, 2017 to clear five areas in the rental unit of his possessions and he did so. The tenant stated the landlord even confirmed that he had done so during the inspection that took place on April 5, 2017. I asked the tenant to describe the oral reasons the landlord gave him for issuing the eviction notice on April 5, 2017. The tenant appeared confused by this question and read in part from the Notice and then explained that his memory is not good.

In filing to dispute the Notice, the tenant’s advocate submitted that the tenant had complied with all of the landlord’s requests that were made in a letter dated March 27, 2017 by the deadline of April 5, 2017 and that the 1 Month Notice should be cancelled.

Following receipt of the tenant’s Application for Dispute Resolution the landlord wrote a letter to the tenant, on April 20, 2017, to clarify the reasons for issuing the 1 Month Notice. In the letter, the landlord writes: “When we entered your unit on April 5th you had cleared enough stuff for us to gain access to the areas we requested.” The landlord goes on to explain that the issue is that: “Due to the water problem not being reported immediately and us not being able to access the areas affected, more damage has occurred.”

Both parties provided consistent testimony that further repairs or renovations are needed or planned for the flooring in the rental unit and the rental unit is filled with a significant amount of possessions that need to be moved in order to facilitate the repairs/renovation. With a view to assisting the parties avoid a future dispute and possibly continue this tenancy I discussed with the parties certain rights and obligations under the Act, including section 32.

Analysis

Section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord.

The Director has the authority to approve forms pursuant to section 10 of the Act, which provides:

Director may approve forms

10 (1) The director may approve forms for the purposes of this Act.

(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The 1 Month Notice to End Tenancy for Cause that is in the approved form provides a section entitled Details of Cause. In this section, the form states: "Include any dates, times, people or other information that says who, what, where or 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 notice to end tenancy that is the subject of this proceeding was in the approved form but I find that it was not sufficiently completed given the lack of "details of cause". In keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) for its issuance so that they may adequately respond or prepare a defence.

A Notice to End Tenancy may be amended in circumstances where the recipient knew or ought to have known the omitted information. Considering the tenant had complied with the landlord's written requests to clear certain areas of the rental unit by April 5, 2017; the tenant's apparent lack of understanding of the landlord's reasons for issuance of the Notice on April 5, 2017; and, the need for the landlord to clarify the landlord's position after the Notice was issued and the tenant disputed it satisfies me that the tenant did not have a clear understanding as to the information that was omitted from the Notice. Therefore, I do not amend the Notice to insert the landlord's reasons that were provided to the tenant much later.

In light of the above, I find the Notice issued on April 5, 2017 was not sufficiently completed and I grant the tenant's request that I cancel it. Accordingly, the tenancy continues at this time.

It is important to note that I have made no finding as to whether the landlord had or still has a basis under the Act for ending the tenancy. As I informed the parties during the hearing, the landlord remains at liberty to issue another Notice to End Tenancy should it be appropriate in the circumstance.

Having heard a primary concern with this tenancy is the volume of possessions in the rental unit that appears to be hampering the landlord's efforts to repair or renovate the rental unit, I informed the tenant that he is responsible for the possessions in his unit and if they need to be moved to accommodate repairs or renovations it is his responsibility to do so. I also informed the tenant that having too many possessions in a rental unit may be viewed as a risk to health and safety or a risk to the property. The tenant's financial or physical limitations are not an exemption from his obligation to appropriately manage the volume and type of possessions kept in his rental unit. I also reproduce section 32 of the Act as further reference for both parties:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[Reproduced as written with my emphasis underlined]

Conclusion

The 1 Month Notice issued on April 5, 2017 has been cancelled because it was not sufficiently completed by the landlord and the tenancy continues at this time.

I have made no finding as to whether there were or still are grounds for eviction and the landlord is at liberty to issue another notice to end tenancy if the circumstances warrant.

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: May 18, 2017

Residential Tenancy Branch