



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0752401 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FF OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49; an order that the landlord comply with the Act pursuant to section 62; and to recover the filing fee from the landlords for the cost of this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution but stated that he did not receive the package of evidence that the tenant submitted to the Residential Tenancy Branch. The tenant testified that she did not provide her package of evidence to the landlord. As each party is required to serve all documents upon which they intend to rely to the other party, as well as the Residential Tenancy Branch, and **the tenant did not serve her evidence to the landlord, I will not consider the documentary evidence she has submitted for this hearing.**

Preliminary Issue: Proof of Service of Notice to End Tenancy

The tenant applied for dispute resolution seeking to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice"). The tenant did not submit a copy of the notice. The tenant testified that she did not receive a 2 Month Notice on a Residential Tenancy Branch form. She testified that she received text message correspondence only from the landlord indicating she was required to vacate the rental unit and no other notice to vacate. She testified that the landlord provided her a copy of a mutual agreement to end tenancy that he had pre-signed and that he required her to sign the notice. She provided undisputed testimony that she did not sign the mutual agreement to end tenancy.

The landlord did not submit a copy of the 2 Month Notice as evidence for this hearing. The landlord's testimony waivered somewhat as to whether he completed and served to the tenant a Residential Tenancy Branch 2 Month Notice on the correct (and current) form. The landlord submitted that, if the tenant's application fails, he should be granted an Order of Possession in accordance with section 55 of the Act. The landlord also made several other unsolicited arguments including but not limited to the late timing of the tenant's application to cancel a notice to end tenancy and whether the tenancy was set for a fixed term. However those arguments are moot in the circumstances.

Section 68 of the *Residential Tenancy Act* discusses the requirements for a Notice to End Tenancy within the Dispute Resolution Hearing process,

- 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.
- (2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
 - (b) set aside or amend a notice given under this Act that does not comply with the Act.

In this case, neither the tenant nor the landlord supplied a copy of the Notice to End Tenancy. Therefore, I have insufficient evidence to show; that the tenant was served with a copy of this Notice to End Tenancy; or that the Notice to End Tenancy complies with section 52 of the Act. I have no document to evaluate with respect to the correctness of its form or its content during the hearing. I am also unable to assess whether the tenant was informed of the grounds for the end of tenancy and the date the tenancy was to end. Further, I am not in a position to consider an amendment of the Notice to End Tenancy as it has not been submitted as evidence for my consideration.

As I have no Notice to End Tenancy before me, I dismiss the tenant's application to cancel said notice. The tenant withdrew her application for an order that the landlord comply with the Act. I dismiss the tenant's application to recover her filing fee.

Generally, pursuant to section 55, I am obliged to issue an Order of Possession when the tenant is unsuccessful in disputing a Notice to End Tenancy. A requirement of section 55(1) is that the landlord's Notice to End Tenancy must meet the standards for form and content as required by section 52 of the Act. In this case, the landlord, in requesting an Order of Possession for the tenant's rental unit has not merely omitted or described in error a date on the notice or misspelled a name: the landlord has failed to provide the notice to end the tenancy that would serve as evidence of both service and the reason for the end of the tenancy.

In this case, I find that the landlord's omission (failure to submit the Notice to End Tenancy) is too great and the consequences too severe to allow the landlord to be granted an Order of Possession. In the circumstances, while I dismiss the tenant's application to cancel the notice to end tenancy, I will not grant the landlord an order of possession in the circumstances.

At this hearing, the landlord was reminded to know his obligations under the Act, particularly with respect to the entry of the rental unit and to be aware of his previous warning by a fellow arbitrator with respect to the issue of entry without notice or permission. Furthermore, the landlord is encouraged to know the steps he is to take and the obligations he must meet in choosing to end a tenancy.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 07, 2017

Residential Tenancy Branch