



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENAKO HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on December 13, 2017. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the Notice); and,
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

Both parties attended the hearing and provided affirmed testimony. The Landlord also brought 3 witnesses, L.C., B.H., and K.G. All parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party raised any issues with respect to service of the Notice of Hearing, or the documentary evidence each party was relying upon during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to have the Notice cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence and Analysis

The landlord served the tenant, in person, on September 25, 2017, with the Notice.

The Notice indicates the following reasons for ending the tenancy in the second page:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

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 current Notice 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).

In this case, I note that the Landlord used a Notice from 2007. I further note the current Notice has been updated significantly, and now includes an area where the Landlord needs to explain the basis for the Notice in a section called the “details of cause”. The Notice was updated to allow tenants to properly understand the basis for the Notice.

I find that using an older form, without the details of cause clearly spelled out, may be prejudicial to the Tenant and their ability to understand the basis for it, and effectively respond to all of these points upon application.

In the Hearing, it appeared there was some uncertainty on the Tenant’s part with respect to why the Notice was issued, as she did not feel anything she had done recently would warrant an eviction. I also note there was more than one ground selected on the Notice. Ultimately, in using an outdated Notice, I do not find the Landlord has sufficiently clarified to the Tenant, at the time the Notice was issued, the basis for it. Further, the problems with respect to using an older Notice without the “details of cause” section is exacerbated by the fact that the Landlord issued

the Notice under more than one ground, which I find makes it even less clear why exactly the Notice was issued.

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. In this case I find that the landlord's failure to use an up to date Notice and complete the Details of Cause section of the approved form is prejudicial to the Tenant.

In light of the above, I grant the Tenant's request that I cancel the Notice. Accordingly, the tenancy continues at this time and until such time it legally ends.

It is important to note that I have made no finding as to whether the landlord has a basis under the Act for ending the tenancy. The landlord remains at liberty to re-issue a Notice to End Tenancy should the landlord decide to pursue eviction.

As the Tenant was substantially successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The 1 Month Notice issued on September 25, 2017 has been cancelled and the tenancy continues at this time.

I have made no finding as to whether there were sufficient grounds for eviction and the landlord is at liberty to re-issue a notice to end tenancy if the landlord so chooses.

The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

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: December 14, 2017

Residential Tenancy Branch