



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

regarding Norbill Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

The Tenant has made an Application for Dispute Resolution (“Application”) for an Order to have the Landlord comply with the Act, the regulations, and/or the tenancy agreement. The Tenant has also applied for an Order for payment of the filing fee.

The notice of this hearing was properly served by the Tenant on the Landlord on February 16, 2018; no written evidence was submitted by the Tenant for consideration. The Landlord states that she provided a package of evidence to the Tenant by registered mail on March 29, 2018 and provided the tracking number for Canada Post, but that it was never picked up by the Tenant.

The Tenant denies having received notification from Canada Post of a package or the Landlord's evidence; however, Canada Post's tracking information indicates that a notice card was left with the addressee on April 3. I find that the Landlord has followed the proper method for serving the evidence on the Tenant and has provided proof of service, despite the fact that the Tenant has not retrieved the package. Under section 90 of the Act, I deem service of the Landlord's evidence was effected by April 3, 2018. Accordingly, the written evidence of the Landlord was considered in addition to the sworn testimony of both the Landlord and the Tenant. Both parties were provided with opportunity to present arguments and ask questions during the hearing.

Issue(s) to be Decided

Has the Landlord failed to comply with the Act, regulations or tenancy agreement, pursuant to section 62 of *The Residential Tenancy Act* (the “Act”)?

Is the Tenant entitled to reimbursement of the filing fee in the amount of \$100.00, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began on October 1, 2015 as a fixed term tenancy to September 30, 2016; it continued as a month-to-month tenancy thereafter and the Tenant states that he has no plans to move elsewhere at this time. Under the tenancy agreement, rent was set at \$1,140.00 payable on the 1st day of each month, with a \$570.00 security deposit held by the Landlord.

The Tenant states that he received a letter from the Landlord on February 8, 2018 stating that he had been evicted effective January 31, 2018. He states that he did not receive any Notice to End Tenancy, or any formal notice, and therefore had no way to dispute the eviction within a mandated timeline. The Tenant states he was advised to file this Application as he believes that the Landlord has failed to comply with the Act in attempting to end this tenancy.

The Landlord states that a One Month Notice to End Tenancy under section 47 (1)(b) of the Act was served on December 2, 2018 primarily as a result of at least three instances of late rent over the course of the previous year; the Notice also indicates that the Tenant has seriously jeopardized the health or safety of other occupants and property, and that there is a breach of a material term of the agreement. She states that she taped the notice to the Tenant's door, but she had no witness or witness statement to verify this; instead, she provided a photograph showing a notice affixed to a door, with a date stamp of December 2, 2017. The notice stated that the Tenant was to turn over possession by January 31, 2018. The Landlord states that the notice was returned through her mail slot on her door the following day, where her husband found it.

The Tenant continues to reside in the rental unit and rent is paid in full. The Landlord marked the February 1st rent payment as "for use and occupancy only". The Landlord did not submit an application for an Order for Possession.

Analysis

There was evidence provided verbally, as well as written documentation, which demonstrates clear animosity between the Landlord and the Tenant. The Tenant states that he has had to call police on more than one occasion for aggressive behaviour on the part of the Landlord, while the Landlord denies this and claims it is the Tenant who is acting in a threatening manner. While I considered all evidence as presented by both parties, not all details of their respective submissions and argument are reproduced here; however, the relevant and important aspects of the Tenant's claim and my findings are set out below.

Section 44(1)(a)(iii) of the Act allows a landlord to end a tenancy for cause under Section 47. Section 47 allows the landlord to end the tenancy for, among other reasons, repeated late payment of rent; the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk; and breach of a material term that has not been corrected within a reasonable time after written notice to do so.

A notice issued under Section 47 must comply with the requirements set forth in Section 52 of the Act. Section 52 states that 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.*

There are mechanisms in place under the Act for a landlord to end a tenancy, but that remedy is only available if the landlord carries it out in accordance with the Act, and serves the notice using the prescribed methods. The rules for effecting service are in place to ensure that a tenant has formal notice of the intention to end the tenancy along with the reasons why; if the termination is for cause under section 47, the tenant would then have ten days to file a dispute and request a hearing to consider the merits of the notice to terminate. Service of a notice to terminate can be effected in several ways, which are outlined in section 88 of the Act. In this case, the Landlord has not provided sufficient evidence that the notice was left taped and posted to the Tenant's door as there was no witness to corroborate her statement, while the Tenant argues he did not receive any formal notice.

Witnesses and witness statements serve as proof of service when posting is the chosen method. I find that the Landlord has failed to satisfy me that a One Month Notice to End the Tenancy was properly served on the Tenant. As such, I order, that should the Landlord seek to end the tenancy they must do so in accordance with all requirements set forth in the Act. As this is not an application by the Landlord for an Order for Possession, I make no finding with respect to the validity of the grounds regarding the

One Month Notice submitted by the Landlord; the Landlord has remedies available by issuing and serving a valid notice to end the tenancy and to seek an Order for Possession by dispute resolution.

The Landlord states that she has “steered clear” of the Tenant since the police were called to attend the rental property and suggested she avoid him. The parties may consider arranging monthly payment of the rent by pre-authorized debit to avoid the ongoing issues with cheques and contact on a monthly basis, which seems to cause both parties concern; this could be done with a simple amendment to paragraph 5 of the Standard and Additional Terms of their tenancy agreement. In addition, service of documents can be completed by registered mail as opposed to posting, and the service is deemed effective on the fifth day after it is mailed, regardless of whether the other party retrieves their mail. The parties should consider these alternative arrangements which are in accordance with the legislation, to minimize direct contact as much as possible.

Conclusion

The Tenant’s Application was successful and I hereby Order that the payment of the filing fee of \$100 shall be applied against and deducted from his future rent payment.

The tenancy shall continue on a month-to-month basis until terminated with proper notice by either party, 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 20, 2018

Residential Tenancy Branch