



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP PRODUCERS REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*.

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 landlord was represented by two agents K.G. and N.H. The landlord's agent K.G. (herein referred to as "the landlord") primarily spoke on behalf of the landlord.

As both parties were in attendance, service of documents was confirmed. The parties confirmed that the tenant personally served the tenant's Application for Dispute Resolution and associated evidence on the landlord on February 22, 2018. In accordance with section 89 of the *Act*, I find that landlord was duly served with the tenant's application.

I note that section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. This month-to-month tenancy began on February 1, 2017. The current monthly rent is \$1,664.00 payable on the first day of each month. The tenant paid a security deposit of \$800.00 at the commencement of the tenancy, and this security deposit is still retained by the landlord.

The landlord testified that on February 5, 2018 she contacted the tenant by telephone regarding a dog that was residing in the rental unit in breach of the tenancy agreement which stipulates "no pets" allowed except with permission from the landlord and payment of a pet damage deposit. The tenant was directed to remove the dog from the rental unit premises. The landlord stated that during this conversation, the tenant expressed that she would not be able to comply with the direction due to personal circumstances. On February 14, 2018, the landlord followed up by sending an email to the tenant reiterating the direction to remove the dog from the rental unit.

The parties agreed that the landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting the notice on the tenant's door on February 14, 2018.

On February 15, 2018, the tenant submitted an application to dispute the One Month Notice and submitted documentary evidence referencing her explanation to the landlord during the February 5, 2018 telephone conversation that the dog belonged to her daughter's friend, who was going through a difficult personal situation and was only temporarily staying with them in the rental unit. At the hearing, the tenant acknowledged that she should not have had the dog in the rental unit but that she was only trying to help a young woman who had no place to go and that the small dog did not cause any damage to the unit during the visit. The tenant testified that the dog was only there for three weeks and left on February 18, 2018.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant confirmed that she received the One Month Notice posted on her door on February 14, 2018 and submitted her application to dispute the notice on February 15, 2018. I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the One Month Notice.

In the matter at hand, the landlord has not submitted the One Month Notice into evidence, and therefore I am unable to determine with any certainty the grounds to end tenancy that were identified on the One Month Notice and provided to the tenant. The landlord provided verbal testimony at the hearing that the One Month Notice was in relation to the tenant's breach of a material term of her tenancy agreement by allowing a dog to reside in the rental unit.

Section 47 (3) of the *Act* requires that the One Month Notice must comply with section 52 of the *Act* in terms of the form and content of the notice to end tenancy.

Section 52 of the *Act* provides that:

- 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,
 - (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.

Because the landlord did not submit a copy of the One Month Notice, nor did they submit any documentary evidence at all in support of their case, I am unable to

determine if the One Month Notice stated the accurate grounds for ending the tenancy or complied with the other requirements for form and content as set out by section 52 of the *Act*.

I have also considered the landlord's testimony that the tenant breached a term of her tenancy agreement. The only recognized cause for ending a tenancy with a one month notice for breach of a term of the tenancy is if the breached term is a "material" term of the tenancy agreement.

A material term is defined in the Residential Tenancy Policy Guideline #8 Unconscionable and Material Terms as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. The Policy Guideline provides further direction on the required criteria to end a tenancy for breach of a material term. It is important to note that all of the following criteria must be met by the party alleging the breach of the material term:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

The landlord did not submit any documentary evidence in support of the grounds for the One Month Notice and as such, the form and content of the One Month Notice cannot be determined as required pursuant to section 52 of the *Act*.

The testimony provided by the landlord confirmed that the tenant was only informed in writing about the breach of a material term of the tenancy agreement on the same day that she was served the One Month Notice, thus depriving the tenant of a reasonable deadline to fix the problem. However, the tenant rectified the problem within four days of receiving the written notice as she testified that the dog left the rental unit on February 18, 2018.

Therefore, as a result of the lack of documentary evidence submitted by the landlord and a failure to fulfill all the criteria required for ending a tenancy due to a breach of a material term, I find the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause and I allow the tenant's application to cancel the One Month Notice.

Conclusion

The tenant's application to cancel the landlord's One Month Notice is allowed. The One Month Notice is of no continuing force or effect. The tenancy will continue until it is ended 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: May 3, 2018

Residential Tenancy Branch