



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. 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.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other and the Residential Tenancy Branch. The tenant sent his Application for Dispute Resolution to the landlord via registered mail which the landlord confirmed receiving.

The tenant's representative stated that the tenant's evidence was sent to the landlord via email on May 28, 2018 and by regular mail on May 29, 2018. The landlord's agent stated he did not receive the tenant's evidence. Email is not a permissible method of service and the tenant was unable to provide verification that the landlord received the evidence via regular mail.

The landlord's evidence was sent to the tenant via registered mail on June 5, 2018 and received by the tenant on June 7, 2018. The tenant's representative pointed out that the landlord's evidence was served to the tenant late. I determined that the last possible date for the tenant to receive the landlord's evidence was June 6, 2018. It was apparent that the landlord failed to take into account mailing time in sending the landlord's evidence on June 5, 2018. As provided under section 90 of the Act, documents sent by mail are deemed to be received five days after mailing.

Since both parties failed to satisfy me that they served the other party with their evidence in a manner that complies with the Act and within the time limits for doing so, I informed the parties that I would exclude the evidence submitted by both parties with a view to fairness to both parties, with the exception of the 1 Month Notice to End Tenancy for Cause since both parties seek a decision on its enforceability. Accordingly, I reviewed the subject 1 Month Notice.

Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy for Cause dated April 20, 2018 valid and enforceable?

Background and Evidence

The tenancy started on December 1, 2013 and the tenant paid a security deposit of \$400.00. The tenant is currently required to pay rent of \$884.00 on the first day of every month.

On April 20, 2018 an agent for the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) to the tenant and posted it to the tenant's door. The tenant filed to dispute the Notice on April 24, 2018. I confirmed with both parties that I was reviewing the Notice that had been served upon the tenant. The Notice is an older form that was approved by the Director and published by the Residential Tenancy Branch in 2006. The second page of the Notice does not include a section entitled "Details of Cause" that appears on the current approved form. I confirmed with both parties that the landlord did not attach any document to the Notice that provides the same information that would have been included in the "Details of Cause" section of the current approved form.

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 approved 1 Month Notice to End Tenancy for Cause has been required and available at the Residential Tenancy Branch since December 2016. The approved 1 Month Notice to End Tenancy for Cause provides a section on the second page 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 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 to the allegation made against them. In this case, I find that the landlord failed to use the approved form and in failing to provide the Details of Cause in an attached document the tenant was deprived of the information that should have been provided to him under the current approved form. Therefore, I find the Notice to End Tenancy that is before me is not enforceable and is of no force or effect.

It is important to note that I have heard or made any finding as to whether the landlord has a basis under the Act for ending the tenancy for cause. As I informed the parties during the hearing, the landlord remains at liberty to issue another Notice to End Tenancy to the tenant, in the approved form, should the landlord decide to pursue the ending of this tenancy. In such a case, the tenant has the right to dispute the Notice within the permissible time limit and the merits of the landlord’s reasons will be heard and decided upon at a future hearing.

Conclusion

The 1 Month Notice issued on April 20, 2018 is of no force or effect since it was not in the approved form and the landlord did not provide the tenant with the information that the tenant would be entitled to receive under the current approved form.

I have not heard or made any finding as to whether there were/are sufficient grounds for eviction and I expressly informed the parties that the landlord is at liberty to issue another notice to end tenancy to the tenant, in the approved form, if the landlord seeks to pursue the ending of this tenancy.

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: June 14, 2018

Residential Tenancy Branch