



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FFT

Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and evidence.

The tenant confirmed that he was personally served with a 1 Month Notice on May 28, 2018 Accordingly, I find the tenant duly served with the 1 Month Notice, pursuant to section 88 of the *Act*.

.Preliminary Issue – Landlord's Evidence

The tenant testified in the hearing that he did not receive the landlord's evidence. The landlord responded that the evidence package was served to the tenant on July 5, 2018 by placing the package in the tenant's mailbox.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was July 4, 2018.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, I find that the tenant has testified that he did not receive the evidence from the landlord, and the landlord did not provide sufficient proof of service to demonstrate that the tenant was served with the package at all.

As I am not satisfied that the tenant was served with the landlord's evidence, the landlord's evidence will be excluded for the purposes of this hearing.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for his application?

Background and Evidence

This tenancy is currently on a month-to-month agreement, with monthly rent in the amount of \$1,100.00, payable on the first of each month. Both parties testified that a written tenancy agreement exists, but no agreement was submitted for this hearing. The tenants are still residing at the rental unit.

The tenant testified that on May 28, 2018 he was served with a 1 Month Notice to End Tenancy for repeated rent payments. Neither the tenant nor landlord submitted a copy of the 1 Month Notice for this hearing.

The tenant admits to paying his rent late, but states that the landlord has always given him permission to do so. The tenant is requesting the 1 Month Notice be cancelled as the landlord does not have the grounds to end this tenancy on this basis.

The landlord is seeking an Order of Possession for the tenant's repeated rent payments.

Analysis

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy for cause for repeated rent payments.

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

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, and

(e) when given by a landlord, be in the approved form...

As neither the landlord nor tenants submitted a copy of the 2 Month Notice for this hearing, I was unable to verify that the Notice complies with the requirements of section 52 of the *Act*. Under these circumstances, I am not allowing the tenants' application to

cancel the 1 Month Notice. The tenancy will continue until ended in accordance with the *Act*.

I find that the tenant is entitled to recover the filing fee for this application.

Conclusion

The landlord's 1 Month Notice to End the Tenancy dated May 28, 2018 is cancelled and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I find that the tenants are entitled to recover the filing fee for this application. I allow the tenants to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 12, 2018

Residential Tenancy Branch