



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 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 tenant attended with his mother and mental health outreach worker as advocates on his behalf, and his mental health case manager as an assistant.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution, served on the landlord by Canada Post registered mail. Based on the undisputed testimonies of the parties, I find that the landlord was served with the tenant's application for dispute in accordance with section 89 of the *Act*.

The landlord confirmed receipt of the tenant's evidentiary materials served by Canada Post registered mail.

The tenant confirmed receipt of the landlord's evidence, which was served on the tenant with the landlord's One Month Notice dated August 30, 2018, by leaving it in the tenant's mailbox as well as slid under his rental unit door on August 30, 2018. The tenant testified that he could not recall when he actually received the documents. Therefore, I have referred to the deeming provisions of section 90 of the *Act* which provide that documents served by leaving them in a tenant's mailbox are deemed

received on the third day. As such, in this case, the tenant is deemed to have received the landlord's One Month Notice on September 2, 2018, along with the landlord's evidentiary materials. I note that serving documents by sliding them under the door is not a permissible method of service under the *Act*.

Procedural Matters

I explained to the parties that section 55 of the *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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? And if not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. Both parties confirmed the following information pertaining to the tenancy agreement:

- This tenancy began in April 2009 as a month-to-month tenancy.
- Monthly rent of \$525.00 is payable on the first of the month.
- A security deposit of \$220.00 was paid by the tenant at the beginning of the tenancy and continues to be held by the landlord.

The landlord submitted a copy of the One Month Notice dated August 30, 2018 into evidence, which states an effective move-out date of September 30, 2018, with the following box checked off as the reason for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk.*

I note that the landlord has not provided any of the particulars or details regarding the reason to end tenancy in the "Details of Cause" section provided on the form. The landlord has only hand-written "health and safety risks" beside the checked-off reason noted above. The parties confirmed that the landlord served the tenant with all her evidence along with the One Month Notice by leaving it in the tenant's mailbox on August 30, 2018. The landlord's evidence served on the tenant consisted of: the tenancy application and agreement; move-in condition inspection report; a handyman repair estimate dated August 27, 2018; and photographs of the condition of the rental unit taken during inspections in July 2017 and August 2018.

I note that the landlord submitted all of her evidence to the Residential Tenancy Branch (RTB) on October 16, 2018 and included a letter dated October 15, 2018 setting out the details of her claim. Since the landlord testified that she served all her evidence on the tenant with the One Month Notice on August 30, 2018, the landlord clearly did not serve this letter on the tenant at that time, because the letter is dated October 15, 2018. Therefore, I have not considered the landlord's letter dated October 15, 2018 as I find that this letter was not served on the tenant as required by the RTB Rules of Procedure.

The landlord testified at the hearing that she retained the services of a handyman to inspect the rental unit. The landlord testified that there is visible water damage to building elements in the rental unit, such as the kitchen counter and cabinet, tub surround and flooring. The landlord testified that there may be an issue of potential mold and damage to the subfloor that could affect the rental units next to and below the tenant's rental unit. The landlord referenced photographs taken in July 2017 that depicted the living room of the rental unit covered in empty pop cans and other debris. The landlord also submitted photographs that were included with the handyman's estimate report, which show a dirty and stained carpet, and some cleaning deficiencies in the form of debris piled up on a coffee table and also on the floor.

The tenant acknowledged that he has struggled with maintaining the cleaning of his rental unit. The tenant's outreach worker testified that she attends at the tenant's rental unit as needed, but no less than every other week, to assist the tenant with cleaning.

The tenant acknowledged that his coffee machine leaked and caused water damage to the kitchen cabinet. However, the tenant testified that when he moved into the rental unit almost 10 years ago the carpet was old and damaged, and there was no grout around the tub. The tenant claimed that any of required repairs to the building elements in the rental unit is due to normal wear and tear. The tenant's mother testified that the tenant's rental unit was one of the last rental units in the building slated to be renovated before he moved in. However, because the tenant moved in, the renovations were never completed.

The landlord confirmed that the rental property was built in the 1930s. The landlord stated that only one other suite in the building is damaged to the extent of the tenant's rental unit as the other units have been well-maintained by the other residents.

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 is deemed to have received the landlord's One Month Notice on September 2, 2018.

The tenant filed an application to dispute the notice on September 10, 2018, which is within ten days of receipt of the notice. Therefore, 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 notice.

Further to this, section 47(3) of the *Act*, requires that a landlord's notice under section 47 of the *Act* must comply with the form and content requirements of section 52 of the *Act*.

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.**

[My emphasis added]

The approved form for a one month notice to end tenancy for cause issued under section 47 of the *Act* includes a section entitled “Details of Cause” and indicates that “The RTB may cancel the notice if details are not described”. The landlord issuing the One Month Notice is required to provide the details pertaining to the reasons for ending the tenancy, to ensure that the tenant is clearly aware of the case being made against them, so that the tenant has a full and fair opportunity to prepare their evidence in order to dispute those claims, should they wish to.

In this matter, the landlord failed to provide any particulars regarding the “details of cause” for issuing the notice on or attached to the notice provided to the tenant. The landlord included an explanatory letter dated October 15, 2018 with her evidence submitted to the RTB, which I am unable to consider because according to the landlord’s testimony pertaining to the service of her evidence and given the date of the letter, she did not serve the letter on the tenant.

The landlord’s testimony in the hearing referenced an inspection conducted by a handyman service. I note that the handyman’s estimate stated “potential damage to subfloor also” and that the landlord’s testimony referenced “potential” mold. I find that the landlord has not provided sufficient evidence that the tenant has put the landlord’s property at significant risk as the landlord’s evidence is speculative in nature regarding the claim that significant repairs are needed to the rental unit. Further to this, I find that the landlord has not provided sufficient evidence that the tenant’s actions or negligence, rather than deferred maintenance, age of building elements and/or normal wear and tear is responsible for putting the landlord’s property at significant risk.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord failed to provide the required details of cause on the One Month Notice, and I find that the landlord failed to provide sufficient

evidence to prove that the tenant has put the landlord's property at significant risk, which the landlord has selected as the reason for ending the tenancy.

As such, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause. The tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated August 30, 2018 is cancelled and of no force or effect, and this tenancy shall 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: October 29, 2018

Residential Tenancy Branch