



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC

Introduction

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

- an Order of Possession for Cause, 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, the tenant's son, and the tenant's agent P.V. (herein collectively referred to as "the tenant" unless specifically referenced individually) attended the hearing, with the tenant's agent primarily speaking on behalf of the tenant. The landlord and the landlord's agent (herein collectively referred to as "the landlord" unless specifically referenced individually) attended the hearing, with the landlord's agent primarily speaking on behalf of the landlord.

As both parties were present, service of documents was confirmed. The landlord testified that they served the tenant on September 17, 2018 with the Notice of Dispute Resolution and their evidence for this hearing by personal service to the tenant's adult son who resides with the tenant, which was confirmed by the tenant. Based on the undisputed testimonies of the parties, and as the landlord's application is only for an Order of Possession under section 55 of the *Act*, I find that the landlord served the tenant with the notice of this hearing in accordance with section 89(2) of the *Act*.

The tenant did not submit any evidence for this hearing, however they explained that they submitted evidence for a hearing scheduled at a future date and provided the file number, which I have noted on the cover sheet of this decision. The tenant requested to have their future scheduled hearing combined to be heard with the landlord's hearing. However, the landlord just received the tenant's notice of the future hearing and evidence, and they have not had an opportunity to submit any of their evidence in response to the tenant's dispute. As such, only the landlord's application was heard and determined at this hearing, and the tenant will have an opportunity for their dispute to be heard at their future scheduled hearing.

Preliminary Issue – Amendment to Landlord's Application

At the outset of the hearing, the tenant confirmed that her last name was spelled incorrectly on the landlord's Application for Dispute Resolution. Pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's Application to correct the spelling of the tenant's last name.

Issue(s) to be Decided

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.

The parties confirmed that there is no written tenancy agreement, only a verbal tenancy agreement. The parties confirmed that this month-to-month tenancy began October 2014 and that the current monthly rent is \$900.00 payable on the first of the month. The landlord continues to hold a \$350.00 security deposit paid by the tenant at the beginning of the tenancy.

The tenant confirmed that the landlord served them with a One Month Notice to End Tenancy for Cause (One Month Notice) dated July 31, 2018 in person on July 31, 2018.

The landlord submitted a copy of the One Month Notice into evidence, which states an effective move-out date of August 31, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

I note that the landlord has not provided any of the particulars or details regarding these reasons to end tenancy in the "Details of Cause" section provided on the form.

The tenant's agent testified that the tenant failed to file an application to dispute the One Month Notice within 10 days of receiving the notice as she did not read the notice and did not bring the notice to the attention of the tenant's agent until after the time limit to dispute the notice had passed. As explained in the Preliminary Issues section of this decision, the tenant's agent has

since assisted the tenant in filing an application for dispute against the landlord and this hearing is scheduled for a future date.

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 acknowledged that they failed to file an application for dispute resolution within the ten days of service of the notice, as granted under section 47(4) of the *Act*.

Accordingly, I must consider if the landlord is entitled to an Order of Possession under section 55 of the *Act*, based on the fact the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice as provided by section 47(5) of the *Act*.

For an Order of Possession to be granted to a landlord, sections 47(3) and 55 of the *Act* require that a landlord's notice to end tenancy for cause must comply with the form and content requirements of section 52 of the *Act*.

In considering this matter, I have reviewed the landlord's One Month Notice to determine if it is compliant with the 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.

Therefore, I find that the landlord’s One Month Notice dated July 31, 2018 does not meet the form and content requirements of section 52 of the *Act*. As such, the One Month Notice is cancelled and of no force or effect, and the landlord is not granted an Order of Possession on the basis of the One Month Notice.

The tenancy continues until ended in accordance with the *Act*.

Conclusion

The landlord’s One Month Notice dated July 31, 2018 is not compliant with section 52 of the *Act* and therefore the notice is cancelled and of no force or effect.

The tenancy continues until 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