



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with a tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* ("1 Month Notice"). 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 confirmed the tenant applied to dispute the 1 Month Notice within the 10 day time limit for doing so and served the landlord with the hearing package. I also confirmed that the landlord had not submitted or served the tenant with any documentary evidence in response to his application. The only document before me was a copy of the 1 Month Notice and I have relied largely upon verbal testimony of both parties.

Issue(s) to be Decided

Should the 1 Month Notice be upheld or cancelled?

Background and Evidence

The month to month tenancy started on August 1, 2017. The tenant paid a security deposit of \$337.50 and is required to pay rent of \$675.00 on the first day of every month. The rental unit is a basement suite and the upper unit is also tenanted.

The landlord posted the subject 1 Month Notice on the tenant's door on July 23, 2017. The landlord ticked the following boxes on the second page of the 1 Month Notice to indicate the following reason(s) for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - has caused or is likely to cause damage to the landlord's property,
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The space on the form that is entitled "Details of Cause" was not completed. Both parties provided consistent testimony that the Notice was not accompanied by an attached page or document.

The landlord explained that she did not complete the "Details of Cause" section because the tenant had been served with three warning or caution letters in November 2017, May 2018 and July 2018 by way of posting the warning letters to the door of the rental unit. The tenant acknowledged receiving a warning letter in November 2017 concerning burning food and setting the off the smoke detector and acknowledged that did happen; however, the tenant denied receiving any other warning letter since then.

The tenant submitted on his application that he has not done anything illegal, he is quiet, and he has not damaged the property. The landlord testified that the tenant smokes marijuana on the property; however, the landlord testified that the primary issue is that the tenant comes home late at night after playing in a band, starts cooking and then falls asleep causing the whole house to fill with smoke and wake the upper tenants. The landlord indicated that the last time this happened was on July 19, 2018. The tenant denied smoking marijuana and pointed out that he plays in the band on Friday and Saturday nights and that July 19, 2018 was not a Friday or Saturday night. The landlord stated that she based her warning letters on complaints she received from the upper tenants; however, she did not attempt to verify the accuracy of the information contained in the complaints with the tenant.

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 issued by a landlord to be effective it must be in the approved form.

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 1 Month Notice to End Tenancy for Cause that is in the approved form provides a section 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).*

The notice to end tenancy that is the subject of this proceeding was in the approved form but I find that it was not sufficiently completed given the lack of “details of cause”. 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. Residential Tenancy Branch Policy Guideline 11: *Amendment and Withdrawal of Notices* provides information on amending a notice to end tenancy. It provides, in part:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) set out the requirements for giving a Notice to End Tenancy. The Legislation allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances.

In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the

same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

In this case, I find there is insufficient evidence for me to conclude the tenant "ought to have known" the reasons the landlord issued the 1 Month Notice. The tenant denied receiving the warning letters issued by the landlord in May 2018 and July 2018. Serving a document on a door is an acceptable method of service and section 90 of the Act deems a person to have received a document three days after posting; however, the courts have found that deeming provision is a rebuttable presumption and the landlord was unable to establish the tenant did in fact receive those warning letters. I find further find that the one warning letter of November 2017 is too distant to expect the tenant "ought to have known" the reasons for eviction pertain to the events that occurred in November 2017. Therefore, I do not amend the 1 Month Notice to reflect details contained in the warning letters.

Also of consideration is that the landlord's primary reason for issuing the 1 Month Notice, as described during the hearing, is not an illegal activity. However, as I informed the parties during the hearing, the Act permits that a tenancy may be ended where the tenant unreasonably disturbs or seriously jeopardizes the health or safety of another occupant of the property or puts the landlord's property at significant risk even if the offending activity is not illegal. The 1 Month Notice provides for those reasons in another place on the approved form.

In light of the above, I grant the tenant's request that I cancel the *1 Month Notice to End Tenancy for Cause* and, as a result, the tenancy continues at this time. Since the tenant was successful in this Application I award the tenant recovery of the filing fee. I authorize the tenant to withhold \$100.00 from a subsequent month's rent payment in satisfaction of this award.

It is important to note that I have made no finding as to whether the landlord has a basis under the Act for ending the tenancy. Rather, I have cancelled the 1 Month Notice since it did not contain the details of cause on the Notice and the reasons provided to me during the hearing do not point to an illegal activity. As I informed the parties during the hearing, the landlord remains at liberty to issue another Notice to End Tenancy should the landlord decide to pursue eviction.

Conclusion

The 1 Month Notice issued on July 23, 2018 has been cancelled.

I have made no finding as to whether there were sufficient grounds for eviction and the landlord is at liberty to issue another notice to end 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: September 25, 2018

Residential Tenancy Branch