



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Landlord resides in the main floor of the home where he rents a self-contained basement suite and that the Application and the Notice of Hearing were sent to the Landlord by registered mail on September 29, 2018, at their address of residence. The Tenant provided me with the registered mail receipt, address label, and tracking number and the Canada Post website confirms that the registered mail was sent as described above and signed for by the Landlord on October 5, 2018. As a result, I find that the Landlord was served in accordance with the *Act* and the Rules of Procedure on October 5, 2018.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure also states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. The Notice of Dispute Resolution Proceeding states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the Notice of Dispute Resolution Proceeding were correct and I note the Tenant had no difficulty attending the hearing on time based on the information contained in the Notice of Hearing. As the Tenant and I both attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled despite the absence of the Landlord or their agent pursuant to rules 7.1 and 7.3 of the Rules of Procedure.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be mailed to them at the mailing address listed in their Application.

Preliminary Matters

The One Month Notice in the documentary evidence before me is dated July 24, 2018; however, the Tenant did not file his Application seeking cancellation of the One Month Notice until September 26, 2018. The Tenant also did not seek additional time in which to make his Application.

In the hearing the Tenant testified that it was not possible for him to have filed his Application prior to September 26, 2018, as this is the date that he received a copy of the One Month Notice. As a result, the Tenant argued that his Application was filed on time. Neither the Landlord nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration regarding service of the One Month Notice.

Section 47(4) of the *Act* states that a tenant who wishes to dispute a One Month Notice must make an application for dispute resolution within 10 days after the tenant receives the notice. In the absence of evidence to the contrary, I accept the Tenant's undisputed and affirmed testimony that he did not receive a copy of the One Month Notice until September 26, 2018, and I therefore find that he filed his Application within the timelines required in Section 47(4) of the *Act*. As a result, the hearing proceeded as scheduled.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

Background and Evidence

The Tenant testified that he was never served with a copy of the One Month Notice by the Landlord or their agent and only became aware that one existed through an unrelated phone call to a case worker at a government office on September 24, 2018. The Tenant stated that the case worker advised him that they had received by fax, a copy of a One Month Notice on July 30, 2018, but that the One Month Notice had been temporarily misplaced and as a result, it was not brought to his attention. The Tenant testified that he received a copy of the One Month Notice from his case worker on September 26, 2018, and immediately filed his Application seeking its cancellation. In support of his testimony the Tenant provided a copy of a fax transmission record.

The One Month Notice in the documentary evidence before me, dated July 24, 2018, has an effective date of September 30, 2018, and states the following grounds for ending the tenancy:

- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
- The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The Tenant argued that the One Month Notice should be cancelled because it was not served on him by the Landlord or their agent in accordance with the *Act* and only came to his attention incidentally through a third party as it was in fact sent by fax to his case worker, who is not an agent for the Tenant in relation to the tenancy. The Tenant stated that he is unsure of how the Landlord gained the contact information required to serve

his case worker with the One Month Notice or why this was done, as his case worker is unrelated to his tenancy relationship with the Landlord, does not act as his agent in relation to his tenancy, and has never been listed as a contact for the Tenant with the Landlord. Further to this, the Tenant denied all allegations made in the One Month Notice.

Neither the Landlord nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration in the hearing.

Analysis

Section 88 of the *Act* states that all documents, other than an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given or served on a tenant, must be done in one of the following ways:

- By leaving a copy with the person;
- By sending a copy by ordinary mail or registered mail to the address at which the person resides;
- By sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- By leaving a copy at the person's residence with an adult who apparently resides with the person;
- By leaving a copy in a mailbox or mail slot for the address at which the person resides;
- By attaching a copy to a door or other conspicuous place at the address at which the person resides; or
- By transmitting a copy to a fax number provided as an address for service by the person to be served.

Although there is documentary evidence before me that the One Month Notice was sent by fax on July 30, 2018, the Tenant testified that it was sent to a case worker of his at a government office unrelated to his tenancy relationship with the Landlord. Further to this, he stated he only became aware of the One Month Notice through a call initiated by him to his case worker on September 24, 2018, on an unrelated matter. Based on the above, and in the absence of any evidence or testimony from the Landlord that the fax number used is an address for service for the Tenant under section 88 of the *Act*, I therefore find that the One Month Notice has not been served on the Tenant in accordance with sections 47 or 88 of the *Act*.

Further to this, rule 6.6 of the Rules of Procedure states that when a tenant seeks cancellation of a notice to end tenancy, the landlord must prove, on a balance of probabilities, that they had cause to serve the notice and end the tenancy under the *Act*; however, neither the Landlord nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration in support of the One Month Notice.

Based on the above, I therefore grant the Tenant's Application and order that the One Month Notice is cancelled and of no force or effect. As a result, I order that the tenancy continue in full force and effect until it is ended by the Tenant or the Landlord in accordance with the *Act*.

Conclusion

The One Month Notice is cancelled and of no force or effect. As a result, I order that the tenancy continue in full force and effect until it is ended by the Tenant or the Landlord 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: November 7, 2018

Residential Tenancy Branch