



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*.

Landlord's agents D.L. and A.D. attended the hearing on behalf of the corporate landlord. The tenant attended the hearing with his support worker J.T. who also provided witness testimony as she acted as the tenant's agent while the tenant was hospitalized in November 2018.

Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Documents

As both parties were present, service of documents was confirmed. The landlord's agent D.L. confirmed receipt of the tenant's application for dispute resolution, served on the landlord by Canada Post registered mail on November 12, 2018. As such, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

The tenant's witness testified that one of her colleagues served the landlord in person on November 20, 2018 with a letter from the tenant providing his permission to police to remove unauthorized occupants from his rental unit and providing his permission to the landlord to change the locks. The landlord's agent D.L. testified that they never

received the letter but they were aware of it and acknowledged their understanding of the letter's content, as they took action regarding the directions in the letter. The tenant's witness testified that she uploaded evidence to the Residential Tenancy Branch dispute website consisting of a letter from the tenant's doctor regarding his hospitalization, however she never served that letter on the landlord. As such, I advised the parties that I would not be considering the tenant's documentary evidence as it was not served to the landlord, but I allowed the verbal testimony pertaining to the letters.

The landlord's agent D.L. testified that the tenant was served with the landlord's evidence by posting it in an envelope on his door on December 7, 2018. Landlord's agent A.D. testified that she witnessed the service, that the service took place at 12:19 p.m., and she had taken a picture of the envelope posted on the door. Landlord's agent A.D. testified that she walked past the tenant's door about an hour later and saw the envelope was no longer there.

The tenant rebutted that he had been served with the landlord's evidence, however, he had no evidence or explanation. The tenant's witness testified that support workers had attended at the tenant's rental unit on December 7, 2018 at 1:00 p.m. It was logged that the tenant was not home at the time. The log makes no mention of the envelope posted on the door.

I find the log notes to support the testimony of landlord's agent A.D. that the envelope was removed from the door approximately an hour after posting. As the tenant has no evidence to rebut the deeming provisions of service by posting on the door, I find that the tenant was served with the landlord's evidence three days after posting, on December 10, 2018, in accordance with the deeming provisions of section 90 of the *Act*. As such, I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act* and the Rules of Procedure. For the benefit of the tenant and the tenant's support worker/witness, I asked the landlord's agent D.L. to provide verbal testimony regarding the landlord's evidence.

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.

The parties confirmed that there is a written tenancy agreement, however, neither party submitted a copy into evidence. The parties confirmed the following details pertaining to this tenancy:

- This month-to-month tenancy began November 7, 2015.
- Current monthly rent of \$805.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$375.00, which continues to be held by the landlord.

The One Month Notice dated October 30, 2018, submitted into evidence by the tenant, states an effective move-out date of November 30, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

Tenant has allowed an unreasonable number of occupants in the unit.

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord*
- *put the landlord's property at significant risk.*

I advised the parties that the landlord had used an old version of the Residential Tenancy Branch One Month Notice to End Tenancy for Cause (RTB-33) form. The

bottom of the form indicates that it is from 2011. The current version of the form was update in 2016 and can be found on the Residential Tenancy Branch website.

The current version of the RTB-33 form has a section titled "Details of Cause" on the second page of the form. Because the landlord has used an obsolete version of the RTB-33 form, the landlord has not provided any of the details of cause required by the current version of the RTB-33 form, either on the form or attached in separate sheets with the form.

The landlord testified that the One Month Notice was served to the tenant by posting on his rental unit door on October 30, 2018.

The tenant testified that he does not know the exact date when he found the One Month Notice posted on his door. As such, I refer to the deeming provisions of section 90 of the *Act* that provide a notice served by posting on the door is deemed received on the third day after posting. In this matter, I find the tenant is deemed to have received the One Month Notice on November 2, 2018, the third day after posting. As a result of finding the tenant in receipt of the notice on November 2, 2018, the effective vacancy date of the notice is automatically corrected from November 30, 2018 to December 31, 2018.

The tenant's support worker acted as an agent on behalf of the tenant to file the Application for Dispute Resolution on November 9, 2018 to dispute the One Month Notice while the tenant was in hospital. The tenant's application was filed within the 10-day time limit provided by the *Act*.

The landlord testified that during an inspection of the tenant's rental unit on November 2, 2018, the landlord found a couple of occupants residing in the tenant's rental unit. The couple stated that they were subletting the rental unit from the tenant and asked for a parking stall. The landlord was unsure if the tenant was residing in the rental unit with the occupants as roommates, or if the tenant had moved out of the rental unit and sublet the rental unit to the occupants. The landlord stated that the tenant had not been given permission from the landlord to sublet his rental unit.

The landlord testified that from September 2018, they noticed people coming and going from the tenant's rental unit.

The landlord testified that on October 27, 2018 the police were called due to storage lockers in the building being broken into. The landlord submitted into documentary

evidence a letter from the local police department responding to the landlord's request for information regarding the investigation into the theft from lockers. As the file was still under investigation, information was withheld. The landlord referred to their submitted documentary evidence which consisted of four letters from residents in the building. Three of the letters are not dated, and one letter is dated November 13, 2018. The landlord summarized that the residents in the building are very concerned that the guests permitted into the building by the tenant are responsible for the locker break-ins and involved in drug activity, and fear that the criminal activity could escalate to include breaking into rental units, mail boxes, cars, etc.

The tenant testified that he provided permission to the police to remove the unauthorized occupants in his rental unit while he was in hospital and provided permission to the landlord to change the locks to his rental unit.

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 was deemed in receipt of the landlord's One Month Notice on November 2, 2018. The tenant filed an application to dispute the notice on November 9, 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, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the notice does not meet the requirements for form and content as set out in section 52 of the *Act* as it is not in the approved form.

In this matter, the landlord has used an old version of the One Month Notice to End Tenancy Form (RTB-33) and therefore it does not include information required on the current, approved version of the form.

The current, approved version of the RTB-33 form has a section titled “Details of Cause” on the second page of the form. The “Details of Cause” section provides the following directions for completing the section:

*Include any dates, times, people or other information that says who, what, where and when caused the issue. **The RTB may cancel the notice if details are not described.** Attach separate sheet(s) if necessary (signed and numbered).*

[My emphasis added]

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. Failing to fully and clearly explain the grounds for issuing a notice to end tenancy is prejudicial to the tenant’s ability to prepare a response in dispute of the notice.

In this case, the One Month Notice used by the landlord did not include the required information either on the form or attached to the form in separate pages. The landlord’s evidence in this matter was not served to the tenant with the One Month Notice, but rather it was served just over a week prior to the hearing date.

Residential Tenancy Policy Guideline #18. Use of Forms addresses when an arbitrator may issue an order based upon a previous form and when an arbitrator may not accept an older version and require a landlord to serve a notice in the current form. The Policy Guideline states as follows, in part:

*If an application is made on an old form, an arbitrator may amend the form or accept the application as validly filed. The arbitrator may refuse to amend the current form if a respondent proves prejudice that is attributable to the use of the old form. **An arbitrator may not amend a form which does not contain the required information.***

[My emphasis added]

As such, I find that One Month Notice does not meet the requirements of section 52 of the *Act*, and therefore the landlord cannot obtain an Order of Possession on the basis of the One Month Notice.

Further to this, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the

grounds for issuing the One Month Notice. The landlord selected the grounds to end the tenancy based on an unreasonable number of occupants in the rental unit, instead of selecting the grounds based on the tenant subletting the rental unit without the landlord's written consent. Had the landlord used the correct One Month Notice form and selected the correct reason for seeking to end the tenancy, the explanation required in the "details of cause" would have clarified the specific concerns of the landlord for ending the tenancy, especially pertaining to this reason. Regarding the reasons based on significant disturbance and putting the property at risk, I find that a preponderance of the landlord's evidence was compiled after the October 30, 2018 One Month Notice was issued, rather than forming the basis for issuing the One Month Notice, as I note that the letters submitted by concerned residents were not dated, except for one which was dated November 13, 2018.

Therefore, the tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

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 October 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: December 31, 2018

Residential Tenancy Branch