



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 a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began approximately 8 years ago and the current monthly rent is \$375.00 payable on the 1st day of each month.

The One Month Notice subject to this dispute is dated November 29, 2018. The One Month Notice was posted to the tenant's door and the tenant acknowledged receiving it on November 30, 2018. The tenant's application to cancel the One Month Notice was filed on December 12, 2018 outside of the 10 day time period permitted under the Act. The tenant's application was required to have been filed on or before December 10, 2018 to meet the 10 day time limit under section 47(4) of the Act.

The tenant did not file any application to extend the time limit to dispute the One Month Notice.

The tenant argued that on the One Month Notice it is outlined that the Notice is assumed received three days after being posted on the door according to which his application is filed within the 10 day time period.

Analysis

There was no dispute that the tenant received the One Month Notice on November 30, 2018.

Pursuant to section 47(4) of the *Act*, the tenant may make a dispute application within ten days of receiving the One Month Notice. As the tenant received the One Month Notice on November 30, 2018, the tenant's application should have been filed on or before December 10, 2018. The tenant's application was not filed until December 12, 2018.

In accordance with section 47(5) of the *Act*, as the tenant failed to take this action within ten days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the One Month Notice, December 31, 2018.

The tenant's application to cancel the One Month Notice is dismissed.

Pursuant to section 55 of the *Act*, if a tenant applies to dispute a Notice to End Tenancy, the director must grant the landlord an order of possession if the tenant's application is dismissed and the Notice to End Tenancy complies with the form and content requirements of Section 52 of the *Act*.

Section 52 of the *Act* states as follows: **(emphasis for ease)**

Form and content of notice to end tenancy

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, and
- (e) when given by a landlord, be in the approved form.**

In reviewing the One Month Notice provided on file, I note that the landlord has utilized an old #RTB-33 from 2011. This form has since been updated by the Residential Tenancy Branch and the updated form is available online. Although the use of an older form is typically not critical, I find that due to the circumstances of the case at hand, the use of the older form by the landlord impacted the timing of the filing of the tenant's application. The old form utilized by the landlord states on page 2 that a tenant is assumed to have received the notice 3 days after it is posted on the door. In distinction, on page 2 of the updated #RTB-33 it clearly states as follows in bold lettering:

Note: The date a person receives documents is what is used to calculate the time to respond; the deeming provisions do not give you extra time to respond.

Accordingly, I find that the landlord did not give the tenant a Notice to End Tenancy in the current approved form as per the requirements of Section 52 of the Act.

The landlord is not granted an order of possession.

Conclusion

The tenant's application to cancel the One Month Notice dated November 29, 2018 is dismissed. The landlord is not granted an order of possession.

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: January 21, 2019

Residential Tenancy Branch