



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

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

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 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.

Landlord's agent M.R. (herein referred to as "the landlord") attended the hearing on behalf of the corporate landlord. The landlord called two witnesses, C.W. and C.M. to present testimony during the hearing.

Tenant J.J. attended and spoke on behalf of both tenants.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and the tenant's evidence. The tenant confirmed receipt of the landlord's evidence.

I have considered only the documentary evidence submitted in accordance with the Residential Tenancy Rules of Procedure. As such, I advised the tenant her late documentary evidence submission dated April 1, 2019 would not be considered for this hearing, although the tenant was provided the opportunity to give her verbal testimony on this evidence during the hearing.

Based on the undisputed testimonies of the parties, I find that both parties were served with the documents for this hearing in accordance with sections 88 and 89 of the *Act* and the Rules of Procedure with the exception of the tenant's April 1, 2019 documentary evidence, as explained above.

As a procedural matter, I explained to both 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, I explained to both parties 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.

Preliminary Issue – Form and Content Requirements for the Notice to End Tenancy

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 to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Section 52 of the *Act* provides that:

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.

In the matter at hand, the tenant submitted a copy of the One Month Notice into evidence.

I have reviewed the One Month Notice and I find that the notice does not comply with the form and content requirements of section 52 of the *Act* as the date on the notice is incorrect. The landlord testified that she erroneously dated the notice March 25, 2019 instead of February 25, 2019.

Further to this, the approved form for a One Month Notice to End Tenancy for Cause includes a section on page two entitled “Details of Cause”, which provides the following explanation regarding the required details to be provided:

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).

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. The landlord testified that she did not provide these details on the notice, or attached to the notice as she felt the reasons for issuing the notice had been adequately set out through prior email communication with the tenant.

However, the tenant testified that it was not until she received the landlord’s evidence package on March 28, 2019, which the landlord testified was sent by registered mail to the tenant on March 26, 2019, that the tenant was provided with the particulars regarding the “details of cause” for issuing the notice, such as the dates and times of the alleged disturbances.

The tenant claimed that she was unable to fully prepare her defence to the allegations made by the landlord in the landlord’s evidence until receiving the dates and times of the alleged disturbances. As a result, the tenant’s evidence package dated April 1,

2019 was submitted late in contravention of the Rules of Procedure, and therefore not considered in this hearing.

I find that the landlord's failure to complete the One Month Notice in the approved form, which requires the provision of the "Details of Cause" has resulted in the landlord failing to adequately provide the "grounds for ending the tenancy" as required by section 52 (d) of the *Act*. Further to this, as explained above, the landlord failed to date the notice correctly as required by section 52 (a) of the *Act*.

For these reasons, I find that the tenant was unfairly prejudiced in her ability to respond to the landlord's One Month Notice.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord's One Month Notice dated March 25, 2019 failed to meet the form and content requirements of section 52 of the *Act*. I order that the One Month Notice is cancelled and of no force or effect.

As the tenants were successful in their application to cancel the One Month Notice, pursuant to section 72 of the *Act*, the tenants are entitled to recover the \$100.00 filing fee from the landlord. In place of a monetary award, the tenants are ordered to withhold \$100.00 from a future rent payment on ONE occasion.

This tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The tenants were successful in their application to dispute the landlord's notice to end the tenancy. I order that the One Month Notice to End Tenancy for Cause dated March 25, 2019 is cancelled and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenants are ordered to withhold \$100.00 from a future rent payment on one occasion in satisfaction of the recovery of the filing fee.

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: April 15, 2019

Residential Tenancy Branch