



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause that was served upon him on February 28, 2018. Both parties appeared or were represented at the hearing.

Preliminary and Procedural Matters

1. Witnesses

Both parties appeared with witnesses present. The witnesses were excluded with instruction to wait until they were called.

2. Service of hearing documents

The tenant had submitted his Application for Dispute Resolution to the Service BC office on March 7, 2019. An error in processing the tenant's Application resulted in a delay in generating the hearing package until March 18, 2019. I confirmed that the tenant served his hearing package by registered mail sent to the male landlord on March 19, 2019 and the tenant's evidence was served to the male landlord in person at least 14 days before the hearing.

The female landlord pointed out she was not served with any of the tenant's documents. The tenant had stated that the male landlord is the landlord named on the documents served to him. I noted that I had not been provided a copy of the 1 Month Notice to End Tenancy for Cause and I did not know which landlord issued the 1 Month Notice.

In any event, the female landlord confirmed that her co-landlord, her husband, had shared the tenant's documents with her and I deemed her to be sufficiently served pursuant to the authority afforded me under section 71 of the Act.

I confirmed that the landlord's evidence was received by the tenant. The landlord testified that they gave the landlord's evidence package to the tenant's girlfriend, at the rental unit property, on April 29, 2019. The tenant confirmed he received it when he got home later that day but pointed out it was not given to him directly by the landlord. The tenant confirmed that his girlfriend is an adult and resides in the rental unit with him. Section 88 of the Act permits service of documents to be given to an adult person who apparently resides with the tenant. As such, I was satisfied the tenant was duly served with the landlord's evidence package.

3. Request for Adjournment

The tenant requested an adjournment because he had requested information of the RCMP concerning the landlord's allegation that the police were called to the property on December 23 and 24, 2018.

The landlord was of the position those dates are not material to this case. The landlord testified that those dates do not appear on the 1 Month Notice or the letter that accompanied the 1 Month Notice. Again, I noted that I had not been provided a copy of the 1 Month Notice.

The tenant explained that the dates of December 23 and 24, 2018 appear in a warning letter of January 24, 2019. The tenant also testified that there was no letter that accompanied the 1 Month Notice. Rather, there were only the two pages of the Notice to End Tenancy form.

Since the dates of December 23 and 24, 2018 do not appear on the 1 Month Notice, or the letter that accompanied it, if there was a letter attached to the 1 Month Notice, I was not persuaded that it the events of December 23 and 24, 2018 were overly material to this case and I did not grant the tenant's request for adjournment.

4. Providing the Notice to End Tenancy

Section 59 of the Act also provides that an applicant provide the full particulars of the dispute that is the subject of the dispute resolution proceeding.

Rule 2.5 of the Rules of Procedure require that where a tenant seeks to cancel a Notice to End Tenancy the tenant must provide a copy of the Notice with the Application for Dispute Resolution to the Residential Tenancy Branch. Rule 3.1 of the Rules of Procedure also provide that documents given to the Residential Tenancy Branch must also be served to the respondent.

I find that, in keeping with section 59 of the Act and Rules 2.5 and 3.1 of the Rules of Procedure, the tenant had an obligation to provide a copy of the 1 Month Notice he seeks to have cancelled to the Residential Tenancy Branch and include a copy in the documents served to the landlord(s).

Although I had not been provided a copy of the 1 Month Notice the tenant seeks to have cancelled, I asked the landlord's if the tenant included the document in the packages the tenant served them. The landlords testified that the documents the tenant served to them did not include a copy of the 1 Month Notice. The landlords testified that they did not provide a copy of the 1 Month Notice either, but did include a copy of the letter they attached to the 1 Month Notice for my consideration in making this decision.

Again, the tenant testified that his copy of the 1 Month Notice did not include an attached letter. The tenant reviewed the 1 Month Notice during the hearing and testified he it had a government stamp of March 1, 2019 on it although he could not recall whether that stamp was obtained from the Service BC office in filing this Application or from the Income Assistance office. I noted that the tenant was at the Service BC office filing this Application on March 7, 2019 so I doubt the stamp relates to the filing of this Application. As such, I find the tenant failed to meet his obligation to include a copy of the 1 Month Notice that he seeks to cancel.

Where a tenant seeks have a Notice to End Tenancy cancelled, I can think of no other document that is more important to submit. In this case, I find the tenant failed to meet his obligation under the Rules of Procedure and failed to provide full particulars as to this dispute as required under section 59 of the Act. Therefore, I dismiss the tenant's Application to cancel the 1 Month Notice without leave to reapply.

5. Order of Possession for landlord

Section 55(1) of the Act provides:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have dismissed the tenant's Application to cancel the 1 Month Notice; however, I am unable to verify that the document served upon the tenant meets the form and content requirements of section 52 of the Act which is required in order for me to issue an Order of Possession. Therefore, I decline to provide the landlords with an Order of Possession in this case.

As the parties were informed during the hearing, the landlords are at liberty to file a Landlord's Application for Dispute Resolution and submit and serve a copy of the 1 Month Notice to the Residential Tenancy Branch and the tenant if they seek an Order of Possession based on the 1 Month Notice served upon the tenant on February 28, 2019. Alternatively, the landlord's may decide to issue a new Notice to End Tenancy or, in another alternative, the landlords may apply for an early end of tenancy under section 56 of the Act if the circumstances warrant such an Application.

Conclusion

The tenant's Application to cancel a 1 Month Notice to End Tenancy for Cause is dismissed.

I have not provided the landlords with an Order of Possession having been unable to verify that it meets the form and content requirements of 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: May 07, 2019

Residential Tenancy Branch