



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on July 22, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice to End Tenancy for Cause (the Notice); and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord attended the hearing. However, the Tenant did not attend the hearing. The Landlord stated that she sent the Notice of Hearing, evidence, and the first amendment (to update the mailing address) to the Tenant on June 12, 2019, by registered mail. The Landlord sent the second amendment by registered mail on July 4, 2019 (to file for a monetary order for unpaid rent). Pursuant to section 88 and 90 of the Act, the Tenant is deemed served with these packages 5 days after they were mailed, on June 17, 2019, and July 9, 2019, respectively.

The Landlord was given a full opportunity to be heard, to present evidence and to make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in this application deals with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Landlord's application with the exception of the following ground:

- an order of possession based on a One Month Notice to End Tenancy for Cause.

Issue to be Decided

- Is the Landlord entitled to an order of possession under the *Act*?

Background, Evidence and Analysis

In the matter before me, the Landlord has the onus to prove that basis for the Notice is valid.

The Landlord testified that she served the Tenant with a One Month Notice to End Tenancy for Cause (the Notice) on April 28, 2019, by posting it to the door of the rental unit. Service of this document was witnessed by a third party, as per the Proof of Service document.

The Landlord stated she served a valid Notice for several reasons. The Landlord stated that the Tenant has also stopped paying rent, and the relationship is degrading.

During the hearing, I stated to the Landlord that I did not have a copy of the Notice to End Tenancy for Cause (the proper fillable government issued form). I informed the Landlord that I had the proof of service, and another hand written letter indicating the reasons the Landlord was relying on to end the tenancy (document titled "Details Re: Ending Tenancy"). However, that document is not a valid "Notice". I informed the Landlord that without a copy of the actual Notice to End Tenancy for Cause, on the proper government issued form (RTB-33). I would not issue an order of possession. I granted the Landlord one full business day to provide a copy of this Notice to either a Service BC centre, or upload it directly to our dispute access portal. After waiting 2 days

for the Landlord to provide this document, I did not receive it. As such, I cannot be satisfied that the Landlord issued a valid Notice to End Tenancy.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form, as quoted below:

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,

(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.

I find there is insufficient evidence to show the Landlord issued a Notice which complies with the form and content requirements set forth under section 52 of the *Act*.

In light of the above, I dismiss the Landlord's application for an order of possession based on this Notice. Accordingly, the tenancy continues at this time and until such time it legally ends. The Notice issued on April 28, 2019 is cancelled.

It is important to note that I have made no finding as to whether the Landlord has a basis under the *Act* for ending the tenancy. The Landlord remains at liberty to re-issue a Notice to End Tenancy should the Landlord decide to pursue eviction. I encourage the Landlord to utilize and provide the proper forms in the future.

I decline to award the recovery of the filing fee, as the Landlord was not successful with their application.

Conclusion

The Landlord's application is dismissed, in full, without leave. The Notice issued on April 28, 2019, has been cancelled and the tenancy continues at this time.

I have made no finding as to whether there were sufficient grounds for eviction and the Landlord is at liberty to re-issue a notice to end tenancy if the Landlord so chooses.

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: July 24, 2019

Residential Tenancy Branch