



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOWEN ENTERPRISE CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, PSF, RP, MNDCT, FFT

Introduction

On June 28, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*, seeking provision of services or facilities pursuant to Section 62 of the *Act*, seeking a repair Order pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance during the 31-minute conference call. The Tenant provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package by registered mail on June 28, 2019 (the registered mail tracking number is on the first page of this decision). The tracking history indicated that this package was received by the Landlord and signed for on July 8, 2019. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord received the Notice of Hearing package.

The Tenant advised that he did not submit any evidence for consideration on this file.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord’s One Month Notice to End Tenancy for Cause, that his other claims would be dismissed, and that he is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that the tenancy started on or around May 1, 2012 and rent is currently established at \$1,300.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$650.00.

He advised that the Landlord served the Notice by posting it on his door on June 27, 2019. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has: put the landlord’s property at significant risk”, “Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: damage the landlord’s property or jeopardize a lawful right or interest of another occupant or the landlord”, “Tenant has not done required repairs of damage to the unit/site”, “Rental unit/site must be vacated to comply with a government order” and “Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.” The Notice indicated that the effective end date of the Notice was July 31, 2019.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided from the Tenant as it is essential to the matter at hand. A copy of this Notice

was provided, by the Tenant as he delivered this to the Residential Tenancy Branch after the hearing concluded.

Analysis

The onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy. As such, I am not satisfied of the validity of the Notice, and I find that the Notice of June 27, 2019 is of no force and effect.

As the Tenant was successful in his application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. As such, I allow the Tenant to withhold this amount from a future month's rent.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of June 27, 2019 to be cancelled and of no force or effect.

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: August 19, 2019

Residential Tenancy Branch