



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on September 24, 2019. The Tenant applied to cancel a 1-Month Notice for Cause (the Notice), pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing with a witness and his advocate. The Landlord was represented at the hearing by two agents. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's documentary evidence and Notice of Hearing package. The Tenant confirmed receipt of the Landlord's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided differing opinions and perspectives on how the events have occurred. Both parties also submitted a substantial amount of documentary evidence. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified

above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Landlord served the Tenant with the Notice by posting it to his door on July 24, 2019. The Tenant confirmed receiving the Notice on July 25, 2019. The Notice indicates the following reasons for ending the tenancy on the second page:

- Tenant has allowed an unreasonable number of occupants in the unit/site.

The Landlord did not fill out the “details of cause” section on the second page of the Notice, nor did the Landlord attach or deliver an attached letter explaining the specifics of why the Notice was issued. The Landlord confirmed that they did not follow up to ensure the Tenant understood the basis for this Notice; they indicated they waited for the Tenant to approach them if he had any questions.

During the hearing, I asked the Tenant if he knew why the Notice was issued and whether or not he understood what it was based upon. After a pause, the Tenant stated “sort of”. He then said he understood, hesitantly. Later in the hearing, the Tenant’s advocate and his mother (who was also present), stated that the Tenant has a learning disability and did not comprehend what was behind the Notice until his advocate started assisting him and reviewing the Landlord’s evidence. The Landlord stated they believe the Tenant understands what this was based upon because of his history not complying with the guest policies.

The Tenant indicated that he does not have anyone staying with him, and does not have any extra ‘occupants’. The Tenant acknowledged having guests over but denies that they live with him. The Landlord also stated that their main issue with the Tenant was his abuse of the guest policy, not specifically because the Tenant has permanently moved someone else into the rental unit as an occupant. There appeared to be some genuine confusion from the Tenant with respect to how the Landlord could try and issue this Notice based on having too many occupants when he has not had anyone living in the unit with him.

The Tenant’s advocate argued that the missing “details of cause” on the Notice is a procedural fairness concern because this lack of information provided to the Tenant, combined with his learning disability, impeded his ability to properly navigate the situation and adequately respond.

Analysis

In the matter before me, the Landlord has the onus to prove that the Notice is valid, and to substantiate the reasons listed on the Notice.

The Tenant acknowledged getting the Notice on July 25, 2019. The Notice indicates the following reasons for ending the tenancy on the second page:

- Tenant has allowed an unreasonable number of occupants in the unit/site.

I note that section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a Landlord.

The Director has the authority to approve forms pursuant to section 10 of the Act, which provides:

Director may approve forms

10 (1) The director may approve forms for the purposes of this Act.

(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The current Notice that is in the approved form provides a section entitled “Details of Cause”. In this section, the form states:

Include any dates, times, people or other information that says who, what, where or when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).

In this case, I note that the Landlord left the “details of cause” section of the Notice blank. The Landlord also did not deliver any attachments or letters with the Notice to explain the details of why they issued it.

I note this section is included on the Notice to allow Tenants to properly understand the basis for the Notice. I find that issuing a Notice with no particulars or explanation under the “details of cause” section, may be prejudicial to the Tenant and their ability to understand the basis for it, and effectively respond to all of these points upon application.

In the Hearing, it appeared there was some uncertainty and hesitation with respect to whether or not the Tenant understood the basis for the Notice. I also note the Tenant’s witness (mother), as well as his advocate corroborated that he has a learning disability. Ultimately, by issuing a Notice without any details of cause I do not find the Landlord has sufficiently clarified to the Tenant, at the time the Notice was issued, the basis for it. The lack of clarity and the missing “details of cause” section is exacerbated by the fact that the Tenant may have a learning disability.

In keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) for its issuance so that they may adequately respond or prepare a

defence. In this case I find that the Landlord's failure to complete the Details of Cause section of the approved form is prejudicial to the Tenant.

In light of the above, I grant the Tenant's request that I cancel the Notice as I do not find the Notice complies with section 52 of the Act. Accordingly, the tenancy continues at this time and until such time it legally ends.

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.

Conclusion

The Notice issued on July 24, 2019, has been cancelled and the tenancy continues at this time.

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: September 24, 2019

Residential Tenancy Branch