



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LATHAM HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 2, 2019, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on July 31, 2019 (the "Notice") and to recover the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 9:30 a.m. Both parties called into the hearing. The Tenant was assisted by P.E., the Constituency Assistant for the MLA in the community in which the rental unit is located. The Landlord was represented by the Manager, T.F.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Should the Notice be cancelled?

2. Is the Tenant entitled to recover the filing fee paid?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlords' Manager, T.F., testified as follows. She confirmed that the tenancy began five years ago.

T.F.'s signature was on the Notice and during the hearing she testified that she completed the Notice and served it by putting it in the Tenant's mailbox on July 31, 2019.

Although two boxes were checked off on the 2nd page of the Notice, the Details of Cause section were left blank. T.F. confirmed that she issued the Notice without providing any Details of Cause. She also confirmed that she did not provide the Tenant with a covering letter or any other document setting out the reasons for issuing the Notice, nor did she discuss the Notice with the Tenant or otherwise provide him with further information as to the reasons for issuing the Notice.

For reasons which will be dealt with in the Analysis section, I did not required testimony from the Tenant.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy. Section 47(3) provides that a 1 Month Notice must comply with section 52 of the *Act*.

Section 52 of the *Act* provides as follows:

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, and
- (e) when given by a landlord, be in the approved form.

The “approved form” as referenced in section 52(e) is #RTB-33 and which can be found online at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb33.pdf>

In the “Details of Cause” section on form #RTB-33, the landlord is informed that the Notice may be cancelled if details are not described. For clarity, I provide a screen shot of that section:

DETAILS OF CAUSE(S): 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).

In the case before me the Landlord failed to provide any such details and this section was left blank.

Often a landlord will serve a tenant with a covering letter setting out the reasons for issuing the Notice and will write “see attached” in the Details of Cause section. The Landlord’s representatives testified during the hearing before me and confirmed that the only document served on the Tenant was the Notice; consequently, the Tenant was not provided with any details or information as to why the Landlord was seeking to end the tenancy, save and except for the general allegations which were checked off by the Landlord on the Notice.

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them, the opportunity to review and respond to any evidence which is

to be relied upon by the claiming party, and to be present at any hearings dealing with the issues so that they may meaningfully respond to the allegations made against them.

A landlord seeking to end a tenancy for cause, is required to give the tenant details of the cause on the notice to end tenancy so that the tenant knows the reasons the landlord wishes to end their tenancy and is able to respond to the specific allegations.

In this case, the Landlord failed to provide any such details. Consequently, I find the Notice is ineffective and should be cancelled. The Tenant's request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

As the Tenant has been successful in his application, I find he is entitled to recover the \$100.00 filing fee; pursuant to section 72 of the *Residential Tenancy Act* he may reduce his next month's rent by \$100.00 as recovery of those funds.

Conclusion

The Notice is cancelled. The Tenant may reduce his next month's rent by \$100.00 as 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: October 03, 2019

Residential Tenancy Branch