



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JUBILEE HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 16, 2019, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy dated August 8, 2019 ("the One Month Notice"); and
- an order granting the return of the filing fee.

The Tenant, the Tenant's counsel L.A., the Landlord's Agents, A.M. and M.P, attended the hearing and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by placing it in the Landlord's mail slot on August 16, 2019. The Landlord's Agent A.M. confirmed receipt. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

A.M. testified that he did not serve a copy of the Landlord's evidence to the Tenant prior to the hearing.

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

According to the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”), 3.16 Respondent’s proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Tenant did not receive the evidence; therefore, the only evidence I will consider from the Landlord is the Landlord’s Agents’ oral testimony during the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

I note that Section 55 of the *Residential Tenancy Act (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 is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated August 8, 2019 pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2015. Rent in the amount of \$320.00 is due to be paid to the Landlord by the first day of each month. The Tenant was not required to pay a security deposit.

A.M. testified that he served the Tenant in person with the One Month Notice on August 8, 2019 with an effective vacancy date of September 30, 2019. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reasons for ending the tenancy on the One Month Notice is;

"The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord".

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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, state the grounds for ending the tenancy; and **be in the approved form**.

I find the Notice to End Tenancy, issued by the Landlord on August 8, 2019 is an outdated form that does not comply with the requirements set out in Section 52 of the *Act*.

In light of the above, I cancel the One Month Notice, dated August 8, 2019. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with her Application, I find that she is entitled to the return of the filling fee. I order that the Tenant deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated August 8, 2019 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is entitled to deduct the amount of \$100.00 from one (1) future rent payment.

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 21, 2019

Residential Tenancy Branch