



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPC

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on August 29, 2019 (the "Notice") and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on November 21, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was represented by the Park Manager, L.H. The Tenants were both in attendance and were assisted by an advocate, P.L.

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. Is the Landlord entitled to an Order of Possession for cause?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's Park Manager, L.H., testified as follows. She confirmed that the tenancy began September 1, 2016.

A copy of the Notice was provided in evidence and which confirmed it was issued on August 29, 2019 with an effective date of September 30, 2019. L.H.'s signature was on the Notice and during the hearing she testified that she completed the Notice and served it personally on the Tenants. She was not able to remember which Tenant she personally served.

The Notice was completed on an RTB form from March 2011. Although two boxes were checked off on the 2nd page of the Notice, the March 2011 form did not have any section for providing the Details of Cause. L.H. confirmed that she did not provide the Tenant with a covering letter or any other document setting out the reasons for issuing the

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

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 40 of the *Act* bears the burden of proving the reasons for ending the tenancy. Section 40(3) provides that a 1 Month Notice must comply with section 45 of the *Act*.

Section 45 of the *Act* provides as follows:

Form and content of notice to end tenancy

- 45** 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 38 (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 45(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>

As noted, the Landlord issued the Notice on an outdated form from 2011. That form was replaced and does not include a “Details of Cause” section which exists on the current approved form #RTB-33.

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 Tenants was the Notice; consequently, the Notice served on the Tenants did not provide the Tenants 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. This is required by sections 40 and 45 of the *Act*.

In this case, the Landlord failed to provide any such details. Consequently, I find the Notice is ineffective and should be cancelled. The Landlord’s request for an Order of Possession is denied.

Conclusion

The Notice is cancelled. The Landlord's request for an Order of Possession is denied.

As the Landlord has been unsuccessful, they are not entitled to recover 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 *Manufactured Home Park Tenancy Act*.

Dated: November 21, 2019

Residential Tenancy Branch