



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE MNDCL-S FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (application) from the landlord seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for an order of possession based on a 1 Month Notice to End Tenancy for End of Employment dated August 18, 2019 (1 Month Notice), for a monetary claim of \$500.00 due to smoking damage, and to recover the cost of the filing fee.

Landlords SC and MYL (landlords) attended the teleconference hearing. The landlords gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated September 10, 2019 (Notice of Hearing), application and documentary evidence were considered. The landlord affirmed that each of the three tenants were served with their own registered mail packages containing the application, Notice of Hearing and documentary evidence on September 12, 2019. Three registered mail packages were provided orally during the hearing and have been included on the cover page of this decision for ease of reference. The landlord testified that all three packages matched the name of each of the three tenants and rental unit address. The landlord also testified that the tenants continue to occupy the rental unit.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. Based on the above, I find the tenants were duly served on the fifth day after mailing on September 17, 2019, in accordance with the Act. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act.

Preliminary and Procedural Matters

Firstly, the landlord was advised that I find the landlord's monetary claim for smoking in the rental unit damage to be premature as the tenants continue to occupy the rental unit as of the date the landlord filed this application on September 3, 2019. Therefore, I grant the landlord liberty to reapply for damages to the rental unit once the tenancy has ended, as the tenants have until the end of the tenancy to clean the rental unit of any damage/cleaning necessary from smoking in the rental unit.

The landlord confirmed the email addresses for the parties at the outset of the hearing and stated that they understood that the decision would be emailed to all parties.

Issues to be Decided

- Is the landlord entitled to an order of possession?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on August 1, 2019. A copy of the 1 Month Notice was submitted in evidence. The landlord incorrectly applied for an order of possession based on the end of employment even though the tenants are not in an employment relationship with the landlord, they simply pay rent as tenants to the landlord.

There is no dispute that the tenants did not dispute the 1 Month Notice after being served with the 1 Month Notice; however, the landlord was advised that the 1 Month Notice does not comply with section 52 of the *Act* which I will address further below.

The landlord failed to check off any of the 18 reasons listed for issuing the 1 Month Notice. In addition, the landlord failed to indicate on the 1 Month Notice how the 1 Month Notice was served on the tenants.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 52 of the Act applies, and states:

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**,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) **when given by a landlord, be in the approved form.**

[Emphasis added]

Regarding the 1 Month Notice, I find it does not comply with section 52 as the landlord failed to check off any of the 18 causes listed on page 2 of the 1 Month Notice.

Furthermore, section 55 of the Act applies and states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*],**
and
- (b) the director, during the dispute resolution proceeding,

dismisses the tenant's application or upholds the landlord's notice.

[Emphasis added]

Based on the above, as I find the 1 Month Notice does not comply with section 52 of the Act, I deny the landlord's request for an order of possession. The landlord is at liberty to serve a new 1 Month Notice on the tenants that complies with section 52 of the Act.

I find the 1 Month Notice is of no force or effect.

I ORDER the tenancy to continue until ended in accordance with the Act.

I do not grant the filing fee as the landlord's application was not successful.

Conclusion

The landlord's application is not successful.

The tenancy shall continue until ended in accordance with the Act.

The filing fee is not granted.

The decision will be emailed to the parties at the email addresses confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 5, 2019

Residential Tenancy Branch