



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution in which they sought to cancel a 1 Month Notice to End Tenancy for Cause issued on September 9, 2019 (the "Notice") as well as recovery of the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on November 15, 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 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.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

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 bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

A copy of the Notice was provided in evidence. Although two boxes were checked off on the 2nd page of the Notice, the Details of Cause section was left blank.

The Landlord 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, although she claimed she discussed the reasons with the Tenant at the time she served the Notice.

The Tenant testified that she received only the two page Notice, did not receive any covering letter or any other document setting out the reasons for the Notice, and denied that the Landlord explained the reasons when she was served.

Notably, on their Application the Tenants also wrote that they were not provided any complaints or warnings in either verbal or written form of the cause as stated on the notice. The Tenants further wrote that they asked the Landlord for examples of what they had done and the Landlord failed to provide any reason.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

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.

In addition, section 47(3) provides that a 1 Month Notice must comply with section 52 of the *Act* which reads 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 also 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 and provide a document setting out the specific reasons the Landlord wishes to end the tenancy. The Landlord testified during the hearing before me and confirmed that the only document served on the Tenants was the Notice. The Landlord testified that she spoke to the Tenant at the time and informed her of the reasons for the Notice. This was disputed by the Tenant. I am unable to reconcile this discrepancy. However, as the Landlord bears the burden of proving the reasons for issuing the Notice I find the Landlord has failed to meet this burden.

Consequently, I find that the Tenants were 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 Tenants' request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

As the Tenants have been successful in this application, I find they are entitled to recover the \$100.00 filing fee; pursuant to section 72 of the *Residential Tenancy Act* they may reduce their next month's rent by \$100.00 as recover of those funds.

Conclusion

The Notice is cancelled. The Tenants may reduce their 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: November 15, 2019

Residential Tenancy Branch