



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR LRE PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47 of the *Act*;
- an Order to suspend or restrict the landlord's right to enter pursuant to section 70 of the *Act*; and
- an Order that the landlord provide services or facilities required by the tenancy agreement or the *Act* pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and the tenant's evidence, which consisted only of a copy of the 10 Day Notice. Based on the undisputed testimonies of the parties, I find that the landlord was served with the tenants notice of this hearing and evidence in accordance with sections 88 and 89 of the *Act* and the Rules of Procedure.

The landlord testified that his agent served his evidence to the tenant by Canada Post registered mail. The tenant testified that she did not receive the landlord's evidence. The landlord testified that he did not have the Canada Post registered mail tracking number as his agent had the paperwork. During the hearing, the landlord called upon his agent to provide witness testimony regarding the Canada Post registered mail tracking number, however, the agent did not have the tracking number available to him at that time. Participants are expected to come prepared to the hearing with proof of service as required by Rule 3.16 of the Residential Tenancy Branch Rules of Procedure, which states:

3.16 Respondent's proof of service

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.

Therefore, I find that the tenant dispute receipt of the landlord's evidence and the landlord was unable to provide proof of service during the hearing. As such, I have considered only the documentary evidence submitted in accordance with the Residential Tenancy Branch Rules of Procedure, which is the tenant's copy of the 10 Day Notice.

Preliminary Issue – Unrelated Claims

The tenant's application included unrelated claims to the tenant's application to dispute the landlord's 10 Day Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy to determine whether or not the tenancy continues. As the tenant's additional claims have different statutory outcomes and are not related to whether or not the tenancy continues, I dismiss with leave to reapply all of the tenant's claims except for their application to dispute the landlord's 10 Day Notice. The tenant is at liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Preliminary Issue - Procedural Matters

As a procedural matter, I explained to both parties that section 55 of the *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*.

Further to this, I explained to both parties that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Preliminary Issue – Form and Content Requirements for the Notice to End Tenancy

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice. Further to this, in order for the landlord to obtain an Order of Possession, section 55 of the *Act* requires that the notice is on the approved form and compliant with section 52 of the *Act*.

Section 52 of the *Act* requires that:

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.**

[My emphasis added]

A copy of the 10 Day Notice was submitted into documentary evidence by the tenant. I have reviewed the 10 Day Notice and I find that the notice does not comply with the form and content requirements of section 52 of the *Act* as the notice was not dated as required by section 52(a) of the *Act*. The landlord entered the date the notice was served, but did not provide the date the notice was signed, as required by the *Act*.

Further to this, the tenant testified that she only received page 1 of the two-page 10 Day Notice. The approved form for a 10 Day Notice to End Tenancy for Cause includes two pages. I note that at the bottom of page 1 of the form, it is clearly stated:

This is page 1 of a 2-page Notice.

The landlord must sign page one of this Notice and must give the tenant pages 1 & 2.

The landlord's agent testified that he had served both pages of the 10 Day Notice, however the landlord never submitted a copy of the 10 Day Notice into documentary evidence. The only copy of the 10 Day Notice before me for this hearing was the copy of the Notice submitted by the tenant.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord's 10 Day Notice failed to meet the form and content requirements of section 52 of the *Act*. I order that the 10 Day Notice is cancelled and of no force or effect.

This tenancy shall continue until it is ended in accordance with the *Act*.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice?

Conclusion

The tenant was successful in her application to dispute the landlord's 10 Day Notice. I order that the 10 Day Notice is cancelled, and this tenancy shall continue until it is ended in accordance with the *Act*.

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 20, 2019

Residential Tenancy Branch