



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELSON GROUP PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 5, 2019, wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on October 24, 2019 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on December 19, 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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and 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. 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 must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord's Property Manager testified that the tenancy began five years ago.

The Landlord's Building Manager's signature was on the Notice and during the hearing she testified that she completed the Notice and served it on the Tenant. The reasons cited on the Notice were indicated in two boxes which were checked off noting that "the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord".

Although two boxes were checked off on the 2nd page of the Notice, the Details of Cause section was left blank. The Landlord's Building Manager 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.

Documentary evidence filed by the Landlord, as well as the testimony of the Landlord's representatives confirmed the reasons for issuing the Notice relate to the Tenant smoking on his balcony. The Landlord's Property Manager conceded that the Tenant's tenancy agreement did not prohibit smoking.

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

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 47 of the *Act* bears the burden of proving the reasons for ending the tenancy. Section 47(3) provides that a 1 Month Notice must comply with section 52 of the *Act*.

Section 52 of the *Act* provides 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 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. The Landlord’s representatives testified during the hearing before me and confirmed that the only document served on the Tenant was the Notice; consequently, the Tenant was 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 Tenant's request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

As the Tenant has been successful in his application, I find he is entitled to recover the \$100.00 filing fee; pursuant to section 72 of the *Residential Tenancy Act* s/he may reduce their next month's rent by \$100.00 as recovery of those funds.

Conclusion

The Notice is cancelled. The Tenant may reduce his 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: December 19, 2019

Residential Tenancy Branch