



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The Landlord was present for the hearing as was one Tenant and a friend as support (the “Tenant”). A neighboring tenant, K.W. was present at the start of the hearing and confirmed she lives in a separate rental unit within the same residential property. K.W. was asked to exit the hearing once it was determined who should be named on the application (see Preliminary Matters below).

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Tenants did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlord named four parties as the Tenants/Respondents on the Application for Dispute Resolution. Two of the named tenants were present at the start of the hearing.

However, based on the testimony presented by both parties, I find that there are three separate tenancies in three separate rental units within the same home. Although the Landlord testified that the tenants all reside in the same home and therefore should all be named on the application, the parties agreed that two of the named tenants live upstairs, one lives downstairs, and one lives in a rental unit in the garage. They also confirmed that each unit pays rent separately and that there are separate entrances with separate keys.

Therefore, I find that the Landlord filed one application for an Order of Possession regarding three rental units and should have filed three separate applications instead. Accordingly, I find that the hearing could not continue with three separate tenancies as each tenant has the right to dispute the individual circumstances of a claim against them. I also note that the Landlord did not file an application to have separate files joined.

Therefore, the hearing continued based on the first two parties named as Respondents who both reside in the upstairs rental unit. K.W. who was present at the start of the hearing and confirmed that she resided in a separate rental unit, was asked to exit the hearing.

Accordingly, the Application for Dispute Resolution and cover page of this decision were amended to remove the additional two parties named as respondents. This amendment was made pursuant to Section 64(3)(c) of the *Act*. The Landlord is at liberty to file new applications regarding the separate tenancies.

Issue to be Decided

Is the Landlord entitled to an Order of Possession based on a One Month Notice to End Tenancy for Cause?

Background and Evidence

The Landlord testified that the tenancy started approximately 1.5 years ago and that there is no written tenancy agreement. He stated that the Tenants E.W. and D.N. rented rooms from the original tenants who later moved out and that E.W. and D.N. now pay the rent to him. He stated that the monthly rent is \$2,000.00 and that no security deposit was paid.

The Tenant testified that she moved into the rental unit around March 2018 and that the monthly rent is \$2,000.00. She agreed that no security deposit was paid and that she originally moved in after the tenancy had started with another tenant.

The Landlord stated that he posted the One Month Notice on the Tenants' door on September 30, 2019. A copy of the first page of the One Month Notice was submitted into evidence and indicates the effective end of tenancy date as October 30, 2019. The Landlord did not submit the second page of the One Month Notice but stated that he printed both pages which were served to the Tenant. The Tenant confirmed receipt of the first page of the One Month Notice on September 30, 2019 but denied receipt of the second page. She stated that they did not dispute the One Month Notice as they were unsure of their rights.

The Landlord stated that he had the second page of the One Month Notice in front of him but when asked was unable to clarify the reason that was checked off on the notice or to indicate which box was checked. However, the Landlord eventually stated that it was due to illegal activity on the property. The Landlord also testified as to letters from the City regarding concern about the Tenants' behaviour on the property and submitted copies of letters from the City.

Analysis

As stated in Section 47 of the *Act*, a tenant has 10 days to dispute a One Month Notice or they are conclusively presumed to have accepted that the tenancy ends. However, I also note Section 52 of the *Act* which states the following:

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.

As indicated in Sections 52(d) and 52(e), in order to be effective a notice to end tenancy must state the grounds for ending the tenancy and must be in the approved form. Although the Landlord testified that both pages were served, given that only the first page was submitted into evidence, the Tenant testified as to only receiving the first page, and as the Landlord was unable to clearly state what reason was checked off on the notice, I find it likely that only the first page was served. Therefore, I find that the approved form was not used as the approved form is two pages long. I also find that the reasons for ending the tenancy were not provided to the Tenants as the details are included on the second page.

I also note that the second page of the One Month Notice includes information for tenants on disputing the notice. Therefore, a tenant may not be aware of their rights to dispute the notice without receipt of both pages.

Accordingly, I find that the One Month Notice is not valid as it does not comply with Section 52 of the *Act* and therefore, I decline to issue an Order of Possession. The Landlord's application is dismissed, without leave to reapply.

Conclusion

The One Month Notice dated September 30, 2019 does not comply with Section 52 of the *Act*. The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply. This tenancy continues until 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: December 17, 2019

Residential Tenancy Branch