



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”); and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant M.P., who stated that they are also acting as an Agent for the other Applicants, the Landlord, two agents for the Landlord, and a witness for the Landlord. All testimony provided was affirmed. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and both parties acknowledged receipt of each other’s documentary evidence. Neither party raised concerns about the service of the Notice of Dispute Resolution Proceeding Package or the documentary evidence. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the One Month Notice?

If the Tenants are not successful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The One Month Notice in the documentary evidence before me states that it was posted to the door or placed in the mailbox/mail slot of the rental unit on June 29, 2020. During the hearing the Landlord’s agent E.D. stated that they posted the One Month Notice to the door of the rental unit on June 29, 2020, and pointed to a photograph in the documentary evidence before me in support of this testimony. In the hearing the Tenant confirmed that the One Month Notice was received on or about that date.

The One Month Notice is signed by the agent E.D., dated June 29, 2020, has an effective date of July 31, 2020, and states the following grounds for ending the tenancy:

- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- The Tenant has assigned or sublet the rental unit without the Landlord’s consent.

During the hearing I confirmed the address of the rental unit and the Landlord’s address with the parties, and pointed out that the address listed to be vacated on page one of the One Month Notice was the Landlord’s address, not the address of the rental unit. The Landlord and their agents seemed unaware of this error prior to my inquiry, and the

agent for the Landlord R.L. argued that this should not constitute grounds for cancelling the One Month Notice as the Tenants clearly understood that the One Month Notice related to their rental unit and pointed to page two of the One Month Notice where it states that an error in the One Month Notice or an incorrect move-out date does not invalidate the One Month Notice and that an arbitrator may end the tenancy on a date other than the date specified in the One Month Notice.

Analysis

Based on the evidence and testimony before me for consideration, I find that the One Month Notice was served on the Tenants on July 29, 2020, and that the Application was filed within the timelines set out under section 47 (4) of the *Act*.

However, for the following reasons I find that the One Month Notice does not comply with section 52 of the *Act* and is therefore of no force and effect. Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice, give the address of the rental unit, state the effective date of the notice, except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and when given by a landlord, be in the approved form.

Although the One Month Notice in the documentary evidence before me is in writing, signed and dated by the Landlord's agent, and contains an effective date, the address listed to be vacated as a result of the One Month Notice is not the address for the rental unit, the form used is out of date and does not contain some of the information currently contained on the most recent approved version of the form (updated March 2020), and does not contain any details to support the grounds selected on the form for ending the tenancy. In the current version of the form, it specifically states that landlords are to provide details in the section provided in support of the grounds selected for ending the tenancy, such as what, where, who and when, and explicitly states that this information is required and that a failure to provide it may result in cancellation of the Notice to End Tenancy by an arbitrator. Based on the above, I therefore find that the One Month Notice does not comply with section 52 of the *Act* as it does not properly state that the address to be vacated is the rental unit, and it is not in the approved form. Further to this, I find that the Landlord's use of an outdated form has also resulted in a fundamental breach of the Tenants' right to know the case against them, as it does not contain the proper details of cause section where landlords are to provide specific details to support the grounds for ending the tenancy selected.

While I acknowledge that the One Month Notice states that an error in the completion of the form does not invalidate it, I take this wording as a forewarning to the tenants who are the subject of the Notice to End Tenancy that an error does not *automatically* invalidate the Notice to End Tenancy, not a waiver of the requirements of section 52 of the *Act*. Although section 68 (1) of the *Act* states that I *may* amend a Notice to End Tenancy that does not comply with section 52 of the *Act* if I am satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and under the circumstances, it is reasonable to do so, it does not require me to amend it. As a result, I find that amending a non-compliant Notice to End Tenancy is discretionary and, in this circumstance, I chose not to amend the Notice to End Tenancy as I do not find it reasonable to do so given the number and gravity of the errors and omissions.

Based on the above, I therefore grant the Tenants' Application seeking cancellation of the One Month Notice and order that the One Month Notice is cancelled and of no force or effect. As a result, I also order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*. Despite the above, the parties should be aware that I have made no findings of fact or law in relation to the validity of the grounds stated for ending the tenancy by the Landlord or their agent in the One Month Notice, and as a result, the Landlord remains at liberty to serve a new One Month Notice on these same grounds, should they wish to do so.

As the Tenants were successful in their Application, I grant them recovery of the \$100.00 filing fee, pursuant to section 72 of the *Act*. The Tenants are therefore entitled to deduct this amount from the next months rent payable under the tenancy agreement, pursuant to section 72 (2) (a) of the *Act*, or to otherwise recover this amount from the Landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect. I therefore order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

Pursuant to section 72 of the *Act*, the Tenants are entitled to deduct \$100.00 from the next months rent payable under the tenancy agreement, in recovery of the filing fee, or to otherwise recover this amount from the Landlord.

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: August 5, 2020

Residential Tenancy Branch