



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

While the tenant attended the hearing with her advocate by way of conference call, the landlord did not. I waited until 11:16 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant and tenant's advocate were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant, tenant's advocate, and I were the only ones who had called into this teleconference.

At the outset of the hearing, the tenant requested an amendment to correct a typographical error to the tenant's name and address. As no party was opposed, these two items were amended to reflect the proper name and address of the tenant.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant's advocate testified that the landlord was served with the application for dispute resolution hearing package ("Application") and notice of hearing by way of registered mail on July 24, 2020, and the evidence package was served on August 6, 2020 by way of registered mail. The advocate provided the tracking numbers for these

two packages during the hearing. In accordance with sections 88, 89, and 90 of the Act, I find that the landlord deemed served with the packages 5 days after mailing. The landlord did not submit any written evidence for this hearing.

The tenant confirmed receipt of the landlord's 1 Month Notice To End Tenancy for Cause ('1 Month Notice'), dated July 16, 2020, which was posted on her door. The tenant testified that she received an identical 1 Month Notice dated July 24, 2020, approximately a week after the date of the 1 Month Notice. Both copies were provided in evidence by the tenant.

Preliminary Issue—Amendment to Tenant's Application

I note that although the second 1 Month Notice dated July 24, 2020 was submitted in evidence, the tenant did not file an amendment to include this second notice as part of the application. The tenant's advocate testified that as this 1 Month Notice appeared to be a duplicate of the first 1 Month Notice, he was instructed by an information officer that an amendment was not necessary as essentially the tenant was served twice with the same 1 Month Notice.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

It was undisputed that the tenant has not provided the landlord or the RTB with an Amendment to this Application for Dispute Resolution. As an amendment was not

formally filed, only the first 1 Month Notice dated July 16, 2020 was dealt with as part of this application.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant and her advocate provided the following sworn testimony. This month-to-month tenancy began on May 15, 2019, with monthly rent currently set at \$600.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$300.00, and a pet damage deposit in the amount of \$100.00. The tenant continues to reside in the rental suite.

The tenant feels that the landlord had served her with the 1 Month Notice to End Tenancy in retaliation for her previous claims against the landlord. The tenant was served with the first 1 Month Notice shortly after filing an application for dispute resolution. The tenant was served with another 1 Month Notice, which the tenant feels is a duplicate of the original 1 Month Notice, on or about August 24, 2020. The tenant is seeking the cancellation of the 1 Month Notice as the landlord has failed to establish that they have ground to end this tenancy on the basis of the 1 Month Notice.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant received the 1 Month Notice on or about July 16, 2020, and filed her application on July 20, 2020. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice dated July 16, 2020, and this tenancy is to continue until ended in accordance with the *Act*.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice dated July 16, 2020 is of no force or effect. 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: August 25, 2020

Residential Tenancy Branch