



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coast Foundation Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution to cancel a 1 Month Notice to End Tenancy dated July 17, 2020. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant appeared with a witness. The witness was excluded with instructions to wait elsewhere until called to testify.

I confirmed the tenant served her proceeding package to the landlord; however, I was provided conflicting testimony as to photographic evidence served upon the landlord. The tenant testified she served a photograph of a door. The landlord's agent testified the tenant served a photograph of the 1 Month Notice to End Tenancy for Cause.

As for the landlord's evidence package, I confirmed the tenant received documentary evidence from the landlord; however, the tenant denied that a USB stick was in the package served upon her. The landlord's agents testified that a USB stick accompanied the documents and the USB stick contained videos. The landlord's agents testified that they tried to confirm with the tenant that she could view the videos but she would not give the landlord confirmation.

As there were inconsistencies with respect to serving photographic and video evidence upon each other, I informed the parties that they may orally describe the content of their photographic and video evidence to me for consideration in making this decision.

I noted I was not provided a copy of the subject 1 Month Notice to End Tenancy for Cause by the tenant, as is required under Rules 2.5 of the Rules of Procedure; however, she did serve a copy to the landlord as is required under Rule 3.1 of the Rules of Procedure. As such, I am satisfied the landlord was not prejudiced by the tenant's failure to submit a copy of the 1 Month Notice. The landlord provided a copy of the 1 Month Notice and I relied the landlord's copy in making this decision.

The tenant named the landlord as an individual who signed the 1 Month Notice. I amended the style of cause to reflect the landlord as the organization identified on the 1month Notice.

Issue(s) to be Decided

Did the landlord issue a valid and enforceable 1 Month Notice to End Tenancy for Cause ("1 Month Notice")? If so, should the 1 Month Notice be cancelled or upheld?

Background and Evidence

The parties provided consistent testimony that the tenancy started in October 2018 and the tenancy is on a month to month basis. The tenant is required to pay rent of \$375.00 per month. The rental unit is located in a building run by an organization geared to provide housing for people suffering from homelessness and/or mental health issues and/or addictions. The landlord operates the property under an operating agreement with BC Housing.

The subject 1 Month Notice to End Tenancy for Cause was issued by the landlord's agent on July 17, 2020 and posted on the tenant's door on July 20, 2020. The 1 Month Notice provided to me by the landlord is an old two page version of a 1 Month Notice published by the Residential Tenancy Branch in December 2016 and it was accompanied by a letter. The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

During the hearing, I informed the parties that the 1 Month Notice before me was not in the approved form and that I would not issue an Order of Possession based on the old form. As such, I declined to hear the reasons for issuance of the 1 Month Notice and informed the parties that I make no determination as to the merits for issuance of the 1 Month Notice and the landlord is at liberty to issue another 1 Month Notice, in the current approved form, to the tenant on the same grounds that formed basis for issuance of the 1 Month Notice that was served on July 20, 2020.

Analysis

In this case the tenant disputed the 1 Month Notice posted to her door on July 20, 2020 and she did so within the time limit permitted under section 47 of the Act.

Where a tenant disputes a notice to end tenancy, the Arbitrator must decide whether to grant the tenant's application to cancel the 1 Month Notice or dismiss the tenant's application and uphold the notice to end tenancy.

Where a tenant's application to cancel a notice to end tenancy is dismissed or the notice to end tenancy is upheld, the landlord may be provided an Order of Possession under section 55(1) of the Act. Section 55(1) of the Act provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[my emphasis underlined]

Section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord. The Residential Tenancy Branch makes available the forms approved by the Director. The Director has the authority to change the notices to end tenancy from time to time and the new form is made available to the public on the Residential Tenancy Branch website.

The 1 Month Notice to End Tenancy for Cause that is before me is not in the form approved by the Director at the time it was issued and served upon the tenant. Therefore, I find the landlord's notice to end tenancy does not comply with section 52 of the Act and pursuant to section 55(1)(a) I cannot provide the landlord an Order of Possession even if the landlord had sufficient grounds for ending the tenancy.

In light of the above, it is not necessary for me to determine whether the landlord had a basis or grounds for issuing a 1 Month Notice on July 17, 2020 as I cannot provide the landlord with an Order of Possession in any event. As such, I cancel the 1 Moth Notice dated July 17, 2020 on the sole basis the landlord used a notice that was not in the approved form; and, in doing so, the landlord is at liberty to issue another 1 Month Notice to the tenant, but in the approved form, even if it points to the same grounds that formed the basis for issuance of the 1 Month Notice dated July 17, 2020.

Conclusion

The 1 Month Notice issued on July 17, 2020 was not on the approved form and the 1 Month notice was cancelled for that reason only. The landlord is at liberty to issue another 1 Month Notice, in the current approved form, upon the tenant.

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: September 01, 2020

Residential Tenancy Branch