



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy and for an order that the landlord comply with the *Act*, regulation or the tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord was also accompanied by his spouse who also gave affirmed testimony. The tenant was accompanied by a support person, who observed only and did not take part in the hearing. The parties were given the opportunity to question each other and give submissions.

During his testimony the landlord testified that the tenant did not serve the Application for Dispute Resolution, evidence and notice of this hearing (the Hearing Package) in accordance with the law. A person who is not the tenant hand-delivered the Hearing Package to the landlord's house-sitter sometime in August, 2020 while the landlord was away on vacation. The landlord returned and received the Hearing Package on August 23, 2020. The house-sitter does not reside with the landlord. The rental unit is a basement suite in a side-by-side duplex and the landlord resides in the upper level of the landlord's side of the duplex.

The tenant did not dispute that testimony.

The *Residential Tenancy Act* specifies that:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

In considering whether or not the tenant has served the Hearing Package in accordance with Section 89, I must consider whether or not the landlord's house-sitter is an agent of the landlord. The *Act* also contains Definitions:

1. "landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

I am satisfied that the house-sitter is not a person who, on behalf of the landlord permits occupation of the rental unit or that the house-sitter performs duties or exercises powers under the tenancy agreement, and therefore is not an agent of the landlord or a proper party to be served.

The tenant filed the application for Dispute Resolution on August 11, 2020, indicating that the landlord served only 2 pages of a 3-page One Month Notice to End Tenancy For Cause or End of Employment. During the course of the hearing, the landlord testified that he re-served the tenant with the 3-page document and an additional page on August 26, 2020. A landlord may not change and re-serve a notice to end a tenancy after a tenant has disputed it.

I find that neither party has complied with the *Act*. However, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Act*. Given that I am not satisfied that the landlord has complied with the *Act*, I cancel the Notice and the tenancy continues.

Since the tenant has not complied with the *Act* by serving the Hearing Package in accordance with Section 89, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause or End of Employment dated August 3, 2020 is hereby cancelled and the tenancy continues.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

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 28, 2020

Residential Tenancy Branch