Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC
OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Tenant's 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).

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.

At the outset of the hearing the Landlord stated that they had also filed an Application for Dispute Resolution (the Landlord's Application) under the Act, seeking:

- An Order of Possession for the rental unit on the basis of the One Month Notice; and
- Recovery of the filing fee.

Having reviewed the Landlord's Application and Residential Tenancy Branch (Branch) records, I find that the Landlord's Application should have been crossed with that of the Tenant, instead of being set for another hearing date and time, as it was filled within the timelines required to cross Applications. As the Tenant acknowledged receipt of the Landlord's Application, and with the agreement of the parties, I therefore crossed the Applications to be heard and decided before me together.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's spouse, the Landlord, the Landlord's spouse, and a witness for the Landlord, all of who provided affirmed testimony. As the parties acknowledged receipt of each other's Applications, the Notice of Hearing, and each other's documentary evidence, and raised no concerns regarding the service of these documents, the hearing proceeded as scheduled and the documentary evidence before me from both parties was accepted for my consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

Copies of the decision will be sent to the parties in the manner requested by them at the hearing.

Preliminary Matters

Preliminary Matter #1

The Landlord argued that the Tenant did not serve their Application on them within the timelines set out under section 59(3) of the Act and rule 3.1 of the Rules of Procedure. As a result, the Landlord argued that the Tenant's Application should be dismissed.

Section 59(3) of the Act states that a person who makes an Application for Dispute Resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director, and rule 3.1 of the Rules of Procedure specifies that the Notice of Dispute Resolution Proceeding Package, which includes a copy of the Application, must be served on respondent within 3 days of being made available by the residential tenancy Branch (the Branch).

The Tenant's Application was considered filed under the Act and the Rules of Procedure on August 28, 2020, which is the date they filed the Application and paid the filing fee. Although Branch records indicate that the Notice of Dispute Resolution Proceeding Package became available to the Tenant on that same date, August 28, 2020, they indicate that the Tenant could not be reached, and the package was therefore not provided to the Tenant for service on the Landlord until

September 4, 2020, when the Tenant contacted the Branch regarding the lack of receipt of the Notice of Dispute Resolution Proceeding Package.
During the hearing the Tenant stated that they do not have voicemail or email and that when they had not heard from the Branch in approximately one week, they called the Branch for an update. The Tenant stated that upon being advised that the Notice of Dispute Resolution Proceeding Package was ready, they obtained a copy and forwarded it to the Landlord by mail on September 9, 2020, along with their documentary evidence. The Landlord acknowledged receipt shortly thereafter.

During the hearing I advised the parties that as I was satisfied that the Landlord was served with adequate notice of the Tenant's Application and hearing date, and provided with sufficient opportunity to attend the hering and provide evidence in their defense, the hearing of the Tenant's Application would proceed as scheduled. The hearing therefore proceeded as scheduled.

I agree with the Landlord that the Tenant's Application was neither served nor sent to the Landlord within 3 days of being made available to them by the Branch on August 28, 2020, as the Tenant testified in the hearing that it was not mailed to the Landlord until September 9, 2020. However, section 66(1) of the Act states that I have the authority to extend time limits under exceptional circumstances and it is clear to me from the testimony of the Tenant in the hearing and records at the Branch, that the reason the Tenant did not serve the Landlord with the Notice of Dispute Resolution Proceeding Package at an earlier date, was because they were unaware of the availability of the Notice of Dispute Resolution Proceeding Package due to a lack of email and voicemail. Further to this, the Landlord clearly had sufficient time to consider and respond to the Tenant's Application and to appear at the hearing in their defense, as they submitted documentary evidence for my consideration and appeared at the hearing as scheduled. As I have also crossed the Landlord's Application with that of the Tenant, I find that no injustice has occurred to the Landlord in proceeding with the hearing for the Tenant's Application, despite the fact that it was served on the Landlord several days late.

Based on the above, the hearing therefore proceeded as scheduled with regards to both the Tenant's Application and the landlord's Application.

Preliminary Matter #2

Although the written tenancy agreement in the documentary evidence before me states that the tenancy falls under the manufactured Home Park Tenancy Act, during the hearing the parties agreed that the Tenant rents a townhouse from the Landlord under the Residential Tenancy Act. Although there was some dispute between the parties regarding whether the Landlord's witness was a roommate of the Tenant or a tenant sharing common space with the Tenant under a separate tenancy agreement, ultimately the parties were in agreement that a tenancy under the Act exists between the Tenant and the Landlord. As a result, I accepted jurisdiction and heard and decided both Applications under the Residential Tenancy Act.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant's Application is dismissed or the One Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the $100.00 filing fee?

Background and Evidence

As stated in the preliminary matters section, there was agreement between the parties that a tenancy under the Act exists. While the parties disagreed about the date on which the One Month Notice was served, they agreed that it was served on and received by the Tenant sometime between August 20 - 21, 2020.

Although both parties submitted copies of the One Month Notice, the Tenant submitted a copy of only the 3rd page. According to the 1st and 2nd pages of the One Month Notice submitted by the Landlord, the One Month Notice was signed and dated August 20, 2020, has an effective date of September 20, 2020, lists the correct address for the rental unit, and was served on the basis that the Tenant or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant. The Tenant did not dispute these details. Although the details of cause section on the Tenant's copy of the One Month Notice was blank, the Landlord's copy contained the following, which I have reproduced as written: "a person permitted on the property By The Tenant has significantly interfered with or unreasonably disturbed another occupant"

The Tenant argued that because the details of cause section was blank, they did not know why the One Month Notice was served, and it should therefore be cancelled. The Landlord stated that the Tenant knew very well why the One Month Notice was served and denied that the details of cause section was blank. As a result, the Landlord therefore argued that the One Month Notice is valid and complies with section 52 of the Act.

Analysis

Section 52 of the Act states that in order to be valid, a notice to end tenancy issued by a landlord must be in writing, signed and dated by the person issuing the notice, give the address for the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Regardless of whether the Tenant received a One Month Notice with no details listed under the details of cause section, as alleged by them, or a copy of the One Month Notice with only “a person permitted on the property By The Tenant has significantly interfered with or unreasonably disturbed another occupant” (reproduced as written) written in the details of cause section, as alleged by the Landlord, I find that insufficient grounds for ending the tenancy were given on the One Month Notice. In my opinion, it is not enough to simply check off the grounds listed on the form or to re-write these grounds under the details of cause section, as doing so does not provide the tenant receiving the notice with any real or substantive information on why those grounds have been selected or a basis upon which to respond in their defence. Further to this, I note that it explicitly states on the One Month Notice that information such as what, where and who caused the issue resulting in the issuance of the One Month Notice, including dates and times, is required and that failure to provide this information in the details of cause section may result in cancellation of the One Month Notice by an arbitrator.

Based on the above, I therefore grant the Tenant’s Application seeking cancellation of the One Month Notice as I find that it does not comply with section 52 of the Act. The Landlord’s Application seeking an Order of Possession for the rental unit on the basis of the One Month Notice is therefore dismissed without leave to reapply.

As the Tenant did not seek recovery of the filing fee in their Application and the Landlord’s Application was dismissed, I decline to grant recovery of the $100.00 filing fee to either party.

Conclusion

I order that the One Month Notice dated August 20, 2020, is cancelled, and that the tenancy therefore continue in full force and effect until it is ended by one of the parties 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 Act.

Dated: October 14, 2020

Residential Tenancy Branch