



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn 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 teleconference system that the landlord and I were the only ones who had called into this teleconference.

Although the tenant confirmed that they were handed the 1 Month Notice by the landlord, they were uncertain when this occurred. They said that they thought it was likely handed to them on August 20, 2020. On this basis, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant gave undisputed sworn testimony that they handed a copy of their dispute resolution hearing package and written evidence to the landlord on September 1, 2020. I find that the landlord was served with these materials in accordance with sections 88 and 89 of the *Act* on September 1, 2020, as declared by the tenant. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by September 21, 2020. In that Notice, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The effective date of this 1 Month Notice automatically corrects to September 30, 2020.

In their written evidence and in their sworn testimony the tenant maintained that the landlord failed to sign or date the 1 Month Notice they had applied to cancel. That 1 Month Notice was without a signature or date.

The tenant also testified that the landlord had handed them a second signed and dated 1 Month Notice on September 8, 2020, requiring the tenant to vacate the rental unit by midnight on October 9, 2020. Although the second 1 Month Notice is not currently before me, I note that in the event that monthly rent was due on the first of the month, the effective date for that second 1 Month Notice issued on September 8, 2020 would automatically correct to October 31, 2020. The tenant said that they had failed to apply to cancel the second 1 Month Notice.

The tenant also said that they have not paid rent for the month of October 2020. They said that they have moved part of their belongings from the rental unit, but have left some of their possessions behind as they have thus far been unable to find alternative accommodations in that community.

Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. As the tenant applied to cancel the 1 Month Notice handed to them on August 20, 2020 by August 28, 2020, and within the ten day period for disputing that Notice, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Section 55(1) of the *Act* reads as follows:

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.*

Section 52 of the *Act* reads in part as follows:

In order to be effective, a notice to end tenancy must be in writing and must...

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

The landlord's failure to attend the scheduled teleconference hearing or provide any written evidence leads to my decision that the landlord has failed to meet the burden of proof of demonstrating that the tenancy should be ended on the basis of the reasons

identified in the first 1 Month Notice. I allow the tenant's application to cancel the 1 Month Notice properly before me.

I also note that the landlord's failure to sign or date that 1 Month Notice would not meet the requirements of section 52(a) of the *Act*. Hence, even if the landlord had attended this hearing and I were to have dismissed the tenant's application, I would not have been able to grant an Order of Possession on the basis of that 1 Month Notice.

Conclusion

The tenant's application to cancel the undated and unsigned 1 Month Notice handed to the tenant on or about August 20, 2020 is allowed. That 1 Month Notice is cancelled and is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I emphasize that this decision is limited to the 1 Month Notice properly before me and has no effect on any other Notice to End Tenancy issued to the tenant by 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: October 09, 2020

Residential Tenancy Branch