



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC-MT, OLC, MNDCT, RP, RR, LRE, AS, MNRT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice"), among several other remedies.

The tenant appeared at the hearing. The landlord appeared and was assisted by a translator who described herself as a friend of the landlord. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of the hearing materials upon each other. Neither party was clear and consistent in their submissions to me concerning service of hearing documents upon each other. Ultimately, I was satisfied the parties had received the other party's materials although the date of service and the method of service was inconsistent and conflicting.

The tenant confirmed that she continues to occupy the rental unit and seeks to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 1 Month Notice and I severed the other remedies sought by the tenant with leave to reapply pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider

unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

The tenant had requested an extension of time to file her Application for Dispute Resolution; however, I noted in filing her Application for Dispute Resolution the tenant had indicated that she received the 1 Month Notice on August 21, 2020 and had submitted her Application for Dispute Resolution on August 28, 2020 which is within the 10 day time limit for disputing a 1 Month Notice. When I turned to the 1 Month Notice submitted by the tenant on August 28, 2020, I noted the 1 Month Notice was dated September 6, 2020 by the landlord on page 1 and on page 2, where it describes service of the 1 Month Notice, the landlord did not indicate the date it was served. I heard from the parties with respect to date(s) of service of the 1 Month Notice and both parties provided varying dates and without any other corroborating evidence. I found the varying verbal submissions not sufficiently reliable and I proceeded on the basis the tenant filed her Application for Dispute Resolution to dispute the 1 Month Notice within the time limit for doing so.

Issue(s) to be Decided

Should the tenant's application to cancel the 1 Month Notice be granted or should the 1 Month Notice be upheld?

Background and Evidence

Neither party provided me with a copy of the written tenancy agreement even though both parties said there was one. Accordingly, I relied upon oral testimony with respect to the terms of tenancy.

The tenant testified the tenancy started on July 15, 2019. The landlord testified that the tenancy started on August 15, 2019. The parties were in agreement that the tenant paid a security deposit of \$1225.00 and the tenant is required to pay rent of \$2450.00 on the first day of every month.

Both parties provided consistent testimony that the tenant was served with a One Month Notice to End Tenancy for Cause on multiple occasions. The landlord explained that he served multiple 1 Month Notices as he was trying to correct errors in the dates that

appeared on the preceding 1 Month Notices and that he considered the preceding 1 Month Notices to be invalid due to the errors. The landlord testified that the most recent 1 Month Notice was dated September 6, 2020.

The tenant indicated she was very confused as to why the landlord kept serving her with different versions of a 1 Month Notice.

The tenant had provided two pages of a 1 Month Notice in filing her Application for Dispute Resolution but the third page was missing. The landlord did not submit any copy of a 1 Month Notice in his written materials.

The 1 Month Notice the tenant submitted has a date of September 6, 2020 by the landlord's signature and an effective date of September 6, 2020; however, the tenant had submitted it to the Residential Tenancy Branch with her Application for Dispute Resolution on August 28, 2020.

I asked the tenant to explain why the 1 Month Notice she submitted on August 28, 2020 is dated September 6, 2020. The tenant stated she did not understand either and that the landlord's notices contained errors. The landlord could not explain why the 1 Month Notice submitted on August 28, 2020 indicated it was signed on September 6, 2020 and he acknowledged he had been making errors with respect to dates a number of times in issuing the 1 Month Notices.

I asked the tenant to read the "Details of Cause" that appear on the third page of the 1 Month Notice since the third page was not before me. The tenant located the third page during the hearing and testified that the Details of Cause section on page 3 was left blank by the landlord.

To verify the content of the Details of Cause on page 3 of the 1 Month Notice, I asked the landlord to turn to the 1 Month Notice dated September 6, 2020 on two occasions and both times he said he did not have the 1 Month Notice with him.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the Notice.

In this case, I was provided a 1 Month Notice dated September 6, 2020; however, it was submitted to the Residential Tenancy Branch by the tenant on August 28, 2020. As such, I find the date appearing next to the landlord's signature is inaccurate and it is impossible that the landlord served the tenant with that notice on September 6, 2020.

In order for a landlord to end a tenancy, the landlord must give the tenant a notice to end tenancy in the approved form. A notice to end tenancy for cause, in the approved form, is three pages and includes a section entitled "Details of Cause" on page 3. This section is to be completed by the landlord so that the tenant is put on notice as to the detailed reasons for ending the tenancy and the opportunity to respond to the allegations at the dispute resolution proceeding. The tenant testified the Details of Cause section of the 1 Month Notice served upon her was blank and the landlord was unable to contradict that by reading me the Details of Cause because he did not have the 1 Month Notice before him.

In light of the above, I find I am unsatisfied the landlord served the tenant with an accurate and duly completed 1 Month Notice and I grant the tenant's application that I cancel it with the effect the tenancy continues at this time.

Having cancelled the 1 Month Notice due to the errors or omissions in completing the form, I did not proceed to hear the landlord's reasons for ending the tenancy as to do so would be prejudicial to the tenant. If the landlord remains of the position he has cause to end the tenancy, the landlord is at liberty to serve the tenant with another 1 Month Notice; however, the landlord is cautioned that in order to be enforceable a notice to end tenancy must be in the approved form and be duly completed with accurate information.

The tenant is awarded recovery of the \$100.00. The tenant is authorized to deduct \$100.00 from rent otherwise payable.

Conclusion

The tenant's application is granted and the 1 Month Notice is cancelled due to errors and omissions on the 1 Month Notice given to the tenant. I did not hear the landlord's reasons for seeking an end to the tenancy and the landlord is at liberty to serve the tenant with another 1 Month Notice if the landlord remains of the position he has sufficient cause to end the tenancy.

The other remedies sought by the tenant were severed from this Application for Dispute Resolution and dismissed with leave to reapply.

The tenant is awarded recovery of the \$100.00 filing fee and is authorized to deduct \$100.00 from rent otherwise payable to recover this award.

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 15, 2020

Residential Tenancy Branch