



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, LRE, OLC

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on January 25, 2021 seeking an order to cancel the One Month Notice to End Tenancy (the “One Month Notice”) for cause. Additionally, they seek the landlord’s compliance with the legislation and/or the tenancy agreement, and reimbursement for the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 20, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenant and landlord both attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. At the start of the hearing, both parties confirmed they received the prepared documentary evidence of the other.

Preliminary Matters

The *Residential Tenancy Branch Rules of Procedure* grant an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . 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.”

Here the matter of urgency is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending. I decline to consider the issue related to the landlord's right to enter the rental unit as well as the landlord's compliance with the legislation and/or the tenancy agreement. The tenant has leave to reapply on these discrete issues.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the One Month Notice?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Is the tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord presented that they issued a One-Month Notice on January 17, 2021. This was for the chief reason of the tenant sub-letting the rental unit to another party. They also issued this to ensure the tenant will vacate at the end of the fixed term tenancy, and because the tenant did not initially pay a security deposit at the start of the tenancy. They stated in the hearing that they did not mention the address of the rental unit.

The tenant provided a copy of the document in their evidence. This shows no details under the space where the landlord specifies the address of the rental unit that the tenant must vacate. In their written material, the landlord highlighted the area missing the information, with a different colour written entry for the address, and the notation: "please add this address to this document."

The landlord also provided that they issued a second One-Month Notice on January 25. This document also specified the tenant move-out date of February 28. The landlord did not provide a copy of this document in their evidence.

The tenant looked to their copy of this January 25 One-Month Notice. They described the indication on the second page that the reason was because of the tenant subletting. Additionally, the landlord provided the indication “expiration of fixed term”.

In the hearing, the LL described what they observed regarding a subletting by the tenant, right up until the day prior to the hearing. They met the new occupants of the rental unit in person. The landlord also provided that the rental unit itself has one kitchen and one washroom, making it impossible for the tenant to remain at that same rental unit.

The tenant maintained this was not a sublet situation. The other occupants that the landlord met are short-term guests who purchased their own home elsewhere. In regard to an acquaintance of the tenant who had resided there for quite some time, the tenant maintained this person was a second tenant, and should be so named on the One-Month Notice.

Analysis

The *Act* s. 47 of the *Act* lists the reasons for which a landlord may issue a One-Month Notice. Within this, s. 47(4) allows a tenant the opportunity to dispute a One-Month Notice within 10 days after they receive the document.

More generally with a notice to end tenancy, s. 52 lists requirements:

- In order to be effective, a notice to end a 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) . . . state the grounds for ending the tenancy,
 . . . and
 - (e) when given by a landlord, be in the approved form.

In the hearing, the landlord provided that the One-Month Notice issued on January 17, 2021 was flawed. It did not show the rental unit address. The copy provided in the evidence by the tenant shows this to be the case. I find this document does not comply with s. 52(b). This is the specific document in response to which the tenant applied to cancel. The tenant’s Application here is thus granted because this One-Month Notice is invalid.

The landlord described that they issued a second One-Month Notice on January 25, 2021. Neither the landlord nor the tenant provided a copy of this in the evidence. The tenant described the document in detail and the landlord spoke to specific reasons to end the tenancy in their oral testimony. While I am satisfied that a second One-Month Notice was issued to the tenant, I do not amend the Application to include this separate notice to end tenancy. I find it is not appropriate to do so where a copy does not appear in the evidence. I make no ruling on the validity of that separate One-Month Notice, nor do I make findings of fact on the reasons for its issuance.

For the reasons above, I order the One Month Notice issued on January 17, 2021 is cancelled. I find it does not comply with the requirements set out in s. 52.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One Month Notice issued on January 17, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 21, 2021

Residential Tenancy Branch