



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, MNRT, MNDCT, RP, RR, PSF, AAT, LRE, LAT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 26, 2021 (the "Application"). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice")
- To dispute a rent increase that is above the amount allowed by law
- To be paid back for the cost of emergency repairs that the Tenant made during the tenancy
- For compensation for monetary loss or other money owed
- For a repair order
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- For an order that the Landlord allow access to the unit
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For authorization to change the locks to the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Tenant appeared at the hearing. Landlord S.S. appeared at the hearing with A.S. to assist. A.S. advised that he was also appearing for Landlord B.S. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlords did not submit evidence. I addressed service of the hearing package and Tenant's evidence.

A.S. testified that the Landlords did not receive any documentation or evidence from the Tenant. The Tenant acknowledged he did not serve the hearing package or evidence on the Landlords.

RTB notes show the Landlord contacted the RTB March 24, 2021 stating that she never received the hearing documents from the Tenant and that the hearing documents were emailed to the Landlord by the RTB on that date. A.S. confirmed the RTB sent the hearing documents to the Landlord. A.S. confirmed the Landlord understood the Notice would be addressed at the hearing today.

I proposed that we deal with the Notice at the hearing and the parties did not disagree. In relation to the remainder of the Application, the Tenant was required pursuant to section 59(3) of the *Residential Tenancy Act* (the "*Act*") and rule 3.1 of the Rules to serve the hearing package on the Landlords. Further, the Tenant was required to serve his evidence on the Landlords pursuant to rules 3.1 and 3.14 of the Rules.

Given the hearing package was not served on the Landlords as required, the Application is dismissed with leave to re-apply, other than the dispute of the Notice. I also note rule 2.3 of the Rules which states:

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.

I have dealt with the dispute of the Notice for two reasons.

First, the RTB sent the hearing package to the Landlords March 24, 2021 and therefore the Landlords should have been aware of the dispute of the Notice approximately one month prior to the hearing. As well, A.S. acknowledged the Landlord was aware that the Notice would be addressed at the hearing today. Therefore, I did not find it unfair to the Landlords to deal with the dispute of the Notice. I also note that I proposed that we deal with the Notice at the hearing and the parties did not object to this.

Second, the issue of the Notice would have been addressed in any event. Section 55(1) of the *Act* states:

55 (1) 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.

If the dispute of the Notice had been dismissed with leave to re-apply, section 55(1) of the *Act* would have required me to consider whether the Landlords were entitled to an Order of Possession based on the Notice. Therefore, the validity of the Notice would have been addressed even if the dispute of the Notice had been dismissed with leave to re-apply with the remainder of the Application.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the tenancy agreement and Notice given both parties are aware of these documents. I have also considered the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession?

Background and Evidence

The Tenant submitted a written tenancy agreement and two signature pages, one signed by the Landlord and the other signed by a M.H. The Tenant testified that he has two tenancy agreements which are the same, but one is signed by the Landlord and the other is signed by M.H.

A.S. testified that there is only one tenancy agreement between the parties and that it is signed by the Landlord.

The parties agreed about the details of the tenancy agreement, which started August 02, 2020.

The Tenant submitted a copy of the Notice. It does not include the rental unit address under "I, the Landlord, give you 10 days' notice to move out of the rental unit/site located at". It does not include an effective date. It is signed by the Landlord but not dated. Page 2 of the Notice does not include the rent amount due or the date it was due.

The Tenant confirmed the Notice submitted is an accurate copy of what he received from the Landlord. The Tenant testified that he received the Notice January 23, 2021.

A.S. advised that the Landlord could not locate a copy of the Notice during the hearing. I read out the details of the Notice submitted to the parties and asked the Landlord if the Notice submitted is what was served on the Tenant. A.S. advised that the details I read out were accurate. A.S. agreed the Notice was served January 23, 2021 in person to the Tenant.

I told the parties the Notice does not comply with section 52 of the *Act* and is not a valid notice to end tenancy. After this, A.S. and the Landlord suggested that the Notice submitted was not the accurate notice to end tenancy served on the Tenant.

Analysis

I accept that the Notice submitted is the accurate notice to end tenancy served on the Tenant for the following reasons. The Tenant uploaded a copy of the Notice which indicates to me that it is the notice to end tenancy the Tenant received. The Notice is addressed to the Tenant and is signed by the Landlord which indicates to me that the Landlord issued the Notice to the Tenant. The Landlords did not upload a different copy of a 10 Day Notice despite knowing since March 24, 2021 that the Tenant had disputed the 10 Day Notice and that this issue would be dealt with at the hearing today. A.S. agreed with the details of the Notice when I read them out to the parties and only suggested that the Notice was not accurate after I told the parties it was not a valid notice to end tenancy and therefore I do not find this suggestion reliable or credible.

The Notice was issued pursuant to section 46 of the *Act* which states in part:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) **A notice under this section must comply with section 52** [form and content of notice to end tenancy]. (emphasis added)

Section 52 of the *Act* states:

52 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) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy...**
- (e) when given by a landlord, be in the approved form.

(emphasis added)

Here, the Notice does not include the rental unit address under “I, the Landlord, give you 10 days’ notice to move out of the rental unit/site located at”. The Notice does not include an effective date. The Notice is not dated by the Landlord. The Notice does not state the grounds for the Notice on page 2 as required.

The Notice does not comply with section 52 of the *Act* and therefore is not a valid notice to end tenancy. Given this, I decline to uphold the Notice and cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Notice is cancelled. The tenancy will continue until ended 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: April 23, 2021

Residential Tenancy Branch