



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1105685 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on May 4, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice to End Tenancy for Cause

The Landlord provided testimony at the hearing. The Tenant did not attend the hearing.

The Landlord testified that he sent the Notice of Hearing along with supporting documentary evidence by registered mail on February 11, 2021. The Landlord provided tracking information to support service. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenants are deemed to have received the Notice of Hearing on February 16, 2021.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

The Landlord testified that he served the Tenants with a One Month Notice to End Tenancy for Cause (the Notice), by giving it to one of the Tenants, in person, on December 30, 2020 at their residence.

The Notice indicates the reason for ending the tenancy is:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord used a 2007 version of the Notice, which does not contain a “details of cause” section. The Landlord also testified that he did not serve any additional letter or explanation alongside the Notice, when it was given on December 30, 2020.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy. However, in order to obtain an order of possession based on this Notice, it must meet the form and content requirements under section 52 of the *Act*.

In this case, the Landlord issued the Notice on the bases indicated above. Based on the Landlord’s testimony and evidence, I am satisfied that the Landlord served the Tenant with the Notice on December 30, 2020.

Section 52 of the *Act* provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a Landlord.

The Director has the authority to approve forms pursuant to section 10 of the *Act*, which provides:

Director may approve forms

10 (1) The director may approve forms for the purposes of this *Act*.

(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The current Notice that is in the approved form provides a section entitled “Details of Cause”. In this section, the form states:

Include any dates, times, people or other information that says who, what, where or when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).

In this case, I note that the Landlord failed to indicate or explain what the basis was under the “details of cause” section of the Notice. The Landlord used a 14 year old form, which does not have this important part of the Notice.

I note the details of cause section is included on the Notice to allow Tenants to properly understand the basis for the Notice. I find that by issuing a Notice with no particulars or explanation under the “details of cause” section, this may be prejudicial to the Tenants and their ability to understand the basis for it, and effectively respond to all of these points upon application.

In keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) for its issuance so that they may adequately respond or prepare a defence. In this case I find that the Landlord’s failure to use an up to date Notice and complete the Details of Cause section of the approved form is prejudicial to the Tenants.

In light of the above, I do not find the Notice complies with section 52 of the Act and I cancel the Notice, issued December 30, 2020. Accordingly, the tenancy continues at this time and until such time it legally ends.

It is important to note that I have made no finding as to whether the Landlord has a basis under the Act for ending the tenancy. The Landlord remains at liberty to re-issue a Notice to End Tenancy, using the correct form, should the Landlord decide to pursue eviction.

Conclusion

The Notice issued on December 30, 2020, has been cancelled and the tenancy continues at this time.

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: May 04, 2021

Residential Tenancy Branch