



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nanaimo Affordable Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC

Introduction

This hearing was set to deal with cross applications. The tenant applied to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice"). The landlord applied for an Order of Possession for cause.

Both the landlord and the tenant appeared for the hearing. The tenant was also assisted by an Advocate. The parties were affirmed and the parties were ordered to not record the proceeding. 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.

Preliminary and Procedural Matters

1. Service of tenant's hearing materials

The tenant's advocate testified that she sent the tenant's proceeding package to the landlord's former agent on March 19, 2021, via email, and she received an email from the former agent acknowledging receipt of the proceeding package. The tenant's Advocate stated she received an email address for the landlord's agent because he had emailed her before but the Advocate acknowledged that the former agent had not given her an email address for purposes of being served.

The landlord's current agent stated the tenant's proceeding package was forwarded to him and he had a copy of it before him. The landlord's current agent stated he had no objection to being deemed sufficiently served with the tenant's proceeding package.

In the circumstances described above, I found the tenant's proceeding package was not properly served; however, I deemed the landlord sufficiently served pursuant to the

discretion afforded me under section 71 of the Act since the landlord's agent had a copy of the proceeding package before him and he had no objection to being deemed sufficiently served.

As for the tenant's evidence package, I heard consistent statements that an email containing a link to the evidence was sent June 3, 2021; however, the landlord's agent responded to the tenant's Advocate that the link was inaccessible. The tenant's Advocate then hand delivered a USB stick and digital evidence details worksheet to the landlord's current agent on June 17, 2021. The tenant and/or her Advocate did not confirm with the landlord that the landlord could view the content on the USB stick, as required under the Rules of Procedure.

I also noted that the tenant's evidence package was served less than seven clear days before the hearing, in violation of the Rules of Procedure.

The landlord's agent confirmed he was able to see the content on the USB stick and he had no objection to being deemed sufficiently served. Accordingly, I deemed the landlord sufficiently served with the tenant's evidence package under section 71 of the Act and I admitted the tenant's evidence.

2. Service of landlord's hearing materials

The landlord's agent stated that, to the best of his knowledge, the landlord's proceeding package and evidence were personally served to the tenant by the landlord's former agent on March 18, 2021.

The tenant testified that she did not receive the landlord's proceeding package or evidence on March 18, 2021 or any other date. The landlord's agent did not have any proof of service before him.

A party serving documents and/or evidence bears the burden to prove service upon the other party. I found the disputed oral statements concerning service of the landlord's proceeding package and evidence package to be insufficient. Accordingly, I did not admit the landlord's evidence package.

As for the landlord's proceeding package, I dismissed the landlord's applications since I was unsatisfied it was served upon the tenant; however, I informed the parties that it is unnecessary for a landlord to make its own Application for Dispute Resolution to obtain an Order of Possession where a tenant has filed to dispute a notice to end tenancy.

Section 55(1) of the Act provides that a landlord will be provided an Order of Possession under a tenant's application where the notice to end tenancy is upheld and the notice is found to be otherwise valid and enforceable. As such, I informed the parties that I was prepared to proceed to make a determination on the validity and enforceability of the notice to end tenancy under the tenant's application if the landlord wished to proceed without the benefit of its evidence package. The landlord's agent stated the landlord wished to proceed by giving oral evidence.

3. Notice to End Tenancy read into evidence

The tenant did not provide a copy of the subject Notice to End Tenancy with her Application for Dispute Resolution or evidence, as required under the Rules of Procedure.

The landlord had provided a copy of it, but the landlord's evidence had not been served upon the tenant. I permitted the landlord to read the content of the notice to end tenancy into evidence. The tenant's advocate had a copy of the notice to end tenancy before her and she confirmed the landlord accurately read the content of the notice to end tenancy into evidence. As such, I admitted the notice to end tenancy into evidence and have relied upon it in making this decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy dated March 5, 2021 be upheld or cancelled?

Background and Evidence

The parties provided consistent evidence that the tenancy started on April 2, 2019 on a month to month basis. The tenant is required to pay \$350.00 toward the monthly rent on the first day of every month and the balance of the rent obligation is subsidized.

The landlord's former agent issued the subject One Month Notice to End Tenancy for Cause ("1 Month Notice") on March 5, 2021 with a stated effective date of April 30, 2021.

The second page of the 1 Month Notice indicates the reason for ending the tenancy is because "*the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*"

On the third page of the 1 Month Notice, in the Details of Cause section, the landlord wrote:

Spanning from July 2020 – Feb 2021 the tenant has repeatedly violated section(s) 22 a, b, d, of the Tenancy Agreement – Tenant Conduct.

Evidence package provided upon dispute.

The landlord's agent acknowledged that there were no other pages that accompanied the 1 Month Notice and that an evidence package was not provided to the tenant at any time before the tenant filed to dispute the 1 Month Notice.

The landlord's agent had testified that an evidence package was served upon the tenant on March 18, 2021; however, the tenant refuted that, as described previously in this decision.

The tenant's Advocate stated she had to call the CEO of the landlord, a society, in an effort to determine the nature of the cause in order to file the tenant's Application for Dispute Resolution.

I asked the tenant whether she understood the reason(s) the landlord was seeking to end her tenancy to which she responded that she keeps to herself. The tenant did acknowledge that the landlord had posted notices to her door.

The landlord's agent pointed out that the tenant did acknowledge receipt of notices posted to her door; however, I noted that I did not have copies of any warning or breach letters in the evidence before me and the "Details of Cause" did not specify the events leading to issuance of the 1 Month Notice were as provided in warning or breach letters already served to the tenant.

Analysis

Section 52 of the Act provides requirements for giving a notice to end tenancy. As seen under section 52(d) and (e) a landlord's notice to end tenancy must provide the grounds for ending the tenancy and be in the approved form, among other things. Below, I have reproduced section 52 of the Act (with my emphasis underlined):

- 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.
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

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 notice to end tenancy that is the subject of this proceeding was in an older version of the current approved form. The form approved at the time of issuance of the 1 Month Notice has a section entitled Details of Cause. Instructions for the Details of Cause provided as follows:

Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An Arbitrator may cancel the notice if details are not provided.

Although the landlord made some entries into the Details of Cause section of the 1 Month Notice, I find that the details provided were vague, did not provide the specific events or circumstances, lacked dates, and there was no reference to breach or warning letters the landlord intended to rely upon in ending the tenancy. As such, I find the grounds for eviction provided on the 1 Month Notice were not sufficiently provided. My finding that the grounds for ending the tenancy were not sufficiently provided is consistent with the tenant's Advocate description of having to call the landlord's CEO in an effort to try to determine the reasons for eviction.

While providing details of cause may require more space than that provided on the approved form, a landlord may attach a separate page with the 1 Month Notice so as to provide the tenant with all the particulars that have given rise to issuance of the 1 Month Notice. The landlord did not do so in this case and indicated in the Details of Cause that evidence would only be provided after the tenant files to dispute the 1 Month Notice; however, a tenant is entitled to be provided the grounds for eviction with the notice to end tenancy under section 52(d) of the Act.

Also, in keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) and/or ground(s) for its issuance so that they may adequately prepare a response or defence. In this case, I find that the landlord's insufficient description of the details of cause on the Notice to End Tenancy, and indicating the evidence or details will only be provided after the tenant files to dispute the 1 Month Notice, to be prejudicial to the tenant.

In light of the above, I cancel the 1 Month Notice dated March 5, 2021 solely due to the inadequate provision of the details of cause with the 1 Month Notice. Since I did not hear or make any findings as to whether the landlord has cause to end the tenancy, the landlord is at liberty to issue another 1 Month notice to the tenant if the landlord decides to pursue eviction.

Conclusion

The 1 Month Notice issued on March 5, 2021 is cancelled because the landlord did not sufficiently provide the grounds for ending the tenancy with the 1 Month Notice.

I have made no finding as to whether there were sufficient grounds for eviction and the landlord is at liberty to re-issue another 1 Month Notice if the landlord decides to pursue the end to this tenancy.

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: June 22, 2021

Residential Tenancy Branch