



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC; CNC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated April 28, 2021 ("1 Month Notice"), pursuant to section 47.

The landlord did not attend this hearing, which lasted approximately 16 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. and ended at 9:46 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference. I monitored the teleconference line throughout this hearing.

At the outset of this hearing, I informed the tenant that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by anyone. The tenant affirmed, under oath, that he would not record this hearing.

During this hearing, I explained the hearing process to the tenant. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

The tenant testified that he personally served the landlord's agent receptionist at the landlord company building, with the tenant's application for dispute resolution hearing package on May 21, 2021. He said that the receptionist told him that she would give the tenant's application to the landlord's property manager. In accordance with section 89(1)(b) of the *Act*, I find that the landlord's agent was personally served with the tenant's application on May 21, 2021.

The tenant confirmed that he did not receive a copy of the landlord's application for dispute resolution hearing package.

The tenant confirmed that he personally received a copy of the landlord's 1 Month Notice on April 28, 2021. The effective move-out date on the notice is May 31, 2021. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was personally served with the landlord's 1 Month Notice on April 28, 2021.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause based on the 1 Month Notice?

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on April 28, 2021, and filed his application to dispute it on May 6, 2021. Accordingly, I find that the tenant's application was filed within the ten-day time limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not appear at this hearing. The landlord did not meet its onus of proof.

Therefore, the landlord's 1 Month Notice, dated April 28, 2021, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*. This tenancy will continue until it is ended in accordance with the *Act*.

Landlord's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the landlord, I order the landlord's application dismissed without leave to reapply.

The landlord's 1 Month Notice, dated April 28, 2021, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Both parties provided a copy of the landlord's 1 Month Notice using an old RTB form, dated July 2007.

Sections 47 and 52 of the *Act*, state in part (my emphasis added):

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...*

...

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

52 **In order to be effective, a notice to end a tenancy must be in writing and must**

(e) when given by a landlord, be in the approved form.

The landlord did not issue a 1 Month Notice to the tenant in the approved RTB form, as required by sections 47 and 52 of the *Act*. The landlord used a 14-year old form, dated July 2007, that is no longer available or approved by the RTB. The current approved RTB form is dated March 24, 2021 and requires the details of cause to be described on page 2 of the notice, as follows (my emphasis added):

*Details of Causes(s): 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.***

The landlord did not include the above required details in its 1 Month Notice, as the 2007 form does not include or require this information.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is granted. The landlord's application for an order of possession for cause based on the 1 Month Notice is dismissed without leave to reapply.

The landlord's 1 Month Notice, dated April 28, 2021, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is 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 *Residential Tenancy Act*.

Dated: September 14, 2021

Residential Tenancy Branch