



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Tenant applies to cancel a One-Month Notice to End Tenancy signed June 8, 2021 pursuant to s. 47 of the *Residential Tenancy Act* (the “*Act*”).

J.T. appeared on his own behalf as Tenant. A.L. and C.C., co-owners of the residential property, appeared as co-Landlord. F.D. appeared as a witness on behalf of the Landlord.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised having personally served the Tenant with the One-Month Notice to End Tenancy on June 8, 2021. The Notice to End Tenancy is dated August 6, 2021, which I accept was an inadvertent error made by the Landlord. To the extent it is necessary, pursuant to s. 68 of the *Act* I amend the date it was signed such that it is corrected to June 8, 2021. The Tenant acknowledged personally receiving the Notice to End Tenancy on June 8, 2021. I find that the Notice to End Tenancy was served in accordance with s. 88 of the *Act* on June 8, 2021.

The Tenant advised having served the Notice of Dispute Resolution and his initial evidence by way of registered mail. The Landlord acknowledged receipt of the Notice of Dispute Resolution and initial evidence by way of registered mail in mid-July 2021. I find that the Notice of Dispute Resolution and initial evidence was served in accordance with s. 89 of the *Act*.

The Landlord submitted no documentary evidence in response to the Tenant's application.

Preliminary Issue – Late Evidence from Tenant

The Tenant submitted additional evidence to the Residential Tenancy Branch on October 4, 2021 which comprised of an email between the Landlord and the Tenant from October 1, 2020. The Tenant advised having served the evidence by way of email on the Landlord. The Landlord denies receiving the additional evidence.

I advised the Tenant that, pursuant to the Rules of Procedure, evidence must be served as soon as is practicable and, in the case of an applicant, no later than 14-days before the hearing. No evidence was provided to indicate that email is an approved form of service between the parties as is contemplated by the Regulations nor is there evidence that an email had, in fact, been sent to the Landlord by the Tenant.

At the hearing, I advised the parties that I was excluding the additional evidence provided by the Tenant on October 4, 2021. I do so on the basis that it was not served in accordance with the *Act* and does not comply with Rule 3.17 of the Rules of Procedure allowing for the inclusion of new and relevant evidence as the email of October 1, 2020 would have been in the Tenant's possession when the initial evidence was served on the Landlord.

Issue(s) to be Decided

- 1) Whether the One-Month Notice to End Tenancy ought to be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

No written tenancy agreement exists between the Tenant and the Landlord.

The Tenant advises having moved into the residential property on March 1, 2017 with a co-tenant M.P.. The residential property is a single-family house comprising of separate units upstairs and downstairs. Initially, the Tenant paid rent for the whole residential property as a single unit (upstairs and downstairs), which was \$3,900.00 per month, due on the 4th. The Tenant advised that no security deposit or pet damage deposit was paid when the tenancy began. The Landlord agrees with the details above with respect to the tenancy.

In October 2020, new occupants moved into the upstairs unit. The Tenant indicates that the new occupants were tenants for the unit whereas the Landlord argues that the occupants were subletting the upstairs from the Tenant. The Tenant indicates that after October 2020, they paid rent in the amount of \$1,300.00 and the upstairs paid \$2,600.00, which totals the \$3,900.00 paid by the Tenant beforehand. The Landlord continued to view the Tenant as solely responsible for total rent of \$3,900.00 due to their view that the Tenant sublet the upstairs.

I understand there are issues with respect to unpaid rent beginning in April 2021 after the occupants upstairs failed to pay rent. I further understand that the occupants upstairs vacated the residential property in May 2021.

The Landlord issued the One-Month Notice to End Tenancy on June 8, 2021 after the Tenant had failed to pay rent when due. The Landlord's notice indicates the Tenant has:

- a) put the landlord's property at significant risk;
- b) engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- c) engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The Notice to End Tenancy does not provide a description of the events giving rise to the notice as is contemplated in the form RTB-33, which is found at the bottom of page 2.

At the hearing, the Landlord indicated that the Tenant is growing cannabis at the residential property. A.L. advises having seen the Tenant grow upwards of 20 plants at the residential property and took pictures of the plants in January 2021. The Landlord indicated that they became aware of the cannabis after the occupants upstairs made a complaint and that they did not consent to the Tenant growing cannabis at the property.

The Tenant advises that M.P. has a medical cannabis growing licence enabling him to grow upwards of 100 plants. No growing licence was put into evidence. The Tenant indicated that he had shown the plants to the Landlord in January 2021 and that, at that time, the Landlord made no mention that the Tenant had to get rid of the plants. The plants were grown in a greenhouse outside at the residential property. The Tenant advises that he and M.P. have stopped growing cannabis at the property approximately one month ago.

Analysis

The Tenant applies to cancel a One-Month Notice to End Tenancy for cause issued pursuant to s. 47 of the *Act*.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month Notice to End Tenancy to the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. Pursuant to Rule 6.6 of the Rules of Procedure, if a tenant disputes the notice and files an application, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord.

Upon review of the Notice to End Tenancy signed June 8, 2021, I find it deficient, and it fails to comply with the formal requirements of s. 52 of the *Act*. Section 52 states that:

- 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.

[Emphasis Added]

Though the Notice to End Tenancy here complies in most respects with the formal requirements under s. 52, it fails to clearly state the grounds for ending the tenancy in that it provides no description of the circumstances in which the notice was issued. Form RTB-33, which is the approved form for notices issued under s. 47 of the *Act*, provides a section for landlords to write in the details for causes. That section states:

This information is required. An arbitrator may cancel the notice if details are not provided.

This wording is included to put landlords on notice of their obligation to clearly set out the grounds for ending the tenancy and the risks of failing to do so. The reason details are to be provided is so that a tenant understands the case made against them by the landlord, which would inform their decision on whether they dispute the notice or accept the tenancy's end. I find the Notice to End Tenancy fails to comply with s. 52 of the *Act*.

Looking at the substantive causes giving rise to the Notice to End Tenancy, as cited by the Landlord, I find that the Landlord's have failed to make out their case. At the hearing, the Landlord began their submissions focusing on the issue of unpaid rent and then speaking about the alleged illegal growth of cannabis after being prompted by me in my questions. The Landlord mentioned learning of the Tenant's cannabis plants in January 2021 and indicates having taken pictures of them at that time. No evidence of pictures was provided by the Landlord. Indeed, the Landlord submitted no evidence at all.

I put significant weight on the following timeline:

- January 2021 – The Landlord learns of the Tenant's cannabis plants
- April 2021 – Rent was not paid in full
- May 2021 – The upstairs occupants vacate the residential property
- June 8, 2021 – The Notice to End Tenancy is issued

I find that the Landlord likely issued the One-Month Notice to End Tenancy on June 8, 2021 due to the issue of unpaid rent. Given the length of time between the Landlord learning of the Tenant's cannabis plants and the Notice to End Tenancy being issued, I find that the Landlord has acquiesced to the Tenant's growing of cannabis in the greenhouse. If the issue was of significant concern, the Landlord would have acted sooner and appears to have only acted once the issue of unpaid rent arose.

The Notice to End Tenancy was not issued due to repeatedly late rent payments. The issue of unpaid rent is governed by s. 46 of the *Act* and the issuing of a 10-Day Notice to End Tenancy. The issue of unpaid rent is not relevant to the One-Month Notice to End Tenancy and I make no determinations with respect to this issue except to the extent that it cannot form the basis to end the tenancy based on the notice that was issued on June 8, 2021.

I find that the Notice to End Tenancy fails to comply with the formal requirements under s. 52 and the Landlord has failed to make out that the grounds for ending the tenancy, as stated at the hearing, existed when the Notice to End Tenancy was issued. The Notice to End Tenancy is hereby cancelled, and the tenancy shall continue until it ends in accordance with the *Act*.

Conclusion

The One-Month Notice to End Tenancy signed June 8, 2021 is hereby cancelled and the tenancy shall continue 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: October 19, 2021

Residential Tenancy Branch