



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

The hearing was convened as a result of the Tenants' application cancellation of a One Month Notice to End Tenancy for Cause dated July 2, 2021 ("1 Month Notice") pursuant to section 47 of the *Residential Tenancy Act* (the "Act").:

Issue(s) to be Decided

This matter was set for hearing by telephone conference call at 11:00 am on November 9, 2021. Neither of the two Tenants attended this hearing. The teleconference line remained open while the phone system was monitored for the entire hearing, which ended at 9:47 am, in order to enable the Tenants to call into this teleconference but neither of the Tenants called into the hearing during this time. During the hearing I asked from time to time if either of the Tenants had called into the conference. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing.

The Landlord was represented at the hearing by the caretaker of the residential premises ("JL").

JL was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses on behalf of the Landlord.

JL acknowledged the Tenants served the Landlord with the Notice of Dispute Resolution Proceeding ("NODP") and although he could not recall the method or date of service but confirmed that the NODP was served on the Landlord sometime in August 2021. As the Landlord has acknowledged receipt of the NODP, I find that the Landlord was served the NODP in accordance with the provisions of section 89 of the Act.

RW could not recall whether the Tenants had served the Landlord with any evidence.

Preliminary Matter – Effect of Non-Attendance by Tenants

Residential Tenancy Branch Rules of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is on the person making the application. However, in some situations the arbitrator may determine the onus is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though this is the Tenants' application, the Landlord bears the evidentiary burden to prove it is more likely than not that the 1 Month Notice is valid. The Landlord must meet this burden even if the Tenants do not attend the hearing.

Rules 7.4 states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submission supplied may or may not be considered.

As such, I will not consider any evidence submitted by the Tenants in advance of the hearing when adjudicating their application to cancel the 1 Month Notice.

Issues

- Are the Tenants entitled to an order cancelling the 1 Month Notice?

- If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' application and my findings are set out below.

The parties did not submit a copy of the tenancy Agreement. JL testified the tenancy commenced about two years ago and had a fixed term of 1 year. He stated the rent was \$1,400.00 payable on the 1st day of each month. The Tenants paid a security deposit of \$700.00 which the Landlord is still holding in trust. As of the date the 10 Day Notice was served, the Tenants had rental arrears of \$400.00

JL testified he served the 1 Month Notice he is the Landlord's caretaker and served the 1 Month Notice on the Tenant's personally on July 2, 2021. The 1 Month Notice states that cause for ending the tenancy is the Tenants have been regularly late paying the rent. JL submitted copies of three 10 Day Notices to End Tenancy for Unpaid Rent for late rent owing as of December 1, 2020, January 1, 2021 and June 1, 2021.

Analysis

Section 47(1) of the Act states in part:

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

- ...
- (b) the tenant is regularly late paying rent,
- ...

Residential Tenancy Branch Policy Guideline 38 (Repeated Late Payment of Rent) provides guidance on when a landlord may end a tenancy where the tenant is repeatedly late paying rent. It states in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waiver reliance on this provision.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, cause for ending the tenancy pursuant to subsections 47(1)(b) of the Act.

I have reviewed the 1 Month Notice and find it is on a form from 2007. The current 1 Month Notice form provides a place for the Landlord to provide details of the cause or causes stated in the Notice. The July 2007 form contains no such space. Furthermore, the Landlord has not submitted any evidence that the Landlord attached a note or letter to the 1 Month Notice that provides details of the cause or causes listed in the Notice. Accordingly, I find that 1 Month Notice does not comply with the form and content requirements of section 52 of the Act. As such, I find the 1 Month Notice is invalid.

I find that the Landlord has failed to discharge the onus to prove the 1 Month Notice is valid. Accordingly, the 1 Month Notice is cancelled and of no force or effect.

I must now consider whether the Landlord is entitled to an Order of Possession. the Tenants’ application to cancel it, without leave to reapply.

Section 55(1) of the Act states:

Order of possession for the landlord

- 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.

As I have found that the 1 Month Notice does not comply with section 52 of the Act, I am unable to grant the Landlord an Order of Possession as the requirements of section 55(1)(a) have not been satisfied.

Conclusion

The 1 Month Notice does not satisfy the requirements of section 52. As a result it is invalid and of no force or effect. The tenancy continues until ended in accordance with the provisions of 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: November 12, 2021

Residential Tenancy Branch