



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for more time to apply to cancel an eviction notice; and to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice").

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents in person, on the day after he received the Notice of Hearing package from the RTB, which was not noted in our system. The Tenant was only able to say that it was at the end of July 2021. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

The Tenant said the Landlord told him that she wants him to vacate the rental unit, because she wants her brother and sister-in-law to move into the rental unit. First, section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. However, "close family member" is defined as the individual's parent, spouse or child, or the parent or child of that individual's spouse. A landlord is not authorized by the Act to end a tenancy so that a brother can move in.

Further, the Tenant said that the Landlord did not give him any notice to end tenancy in the required form, although he could not explain why he applied for an order to cancel a One Month Notice, for which the ground of eviction is cause.

Section 52 of the Act requires a notice to end tenancy to contain specified content and be in the approved form. Section 52 states:

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

- (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.

I advised the Tenant that I was dismissing his Application without leave to reapply, because there is insufficient evidence before me of a matter to be resolved by the RTB. Further, as the burden of proof is on the Landlord when a Tenant applies to cancel an eviction notice, I find that the Landlord's failure to attend the hearing eliminates her right to be granted an order of possession of the rental unit in these circumstances.

In the hearing, the Tenant advised me that the Landlord and some of her friends and/or relatives had entered his suite and damaged his possessions. The Tenant also submitted photographs showing that the Landlord had moved many of the Tenant's belongings outside in an effort to encourage him to leave. Should this happen again, the Tenant is urged to **call the police**, as the Landlord's actions are illegal. The Tenant is also urged to apply to the RTB for relief from the Landlord's apparent breaching of the Tenant's right to quiet enjoyment of the rental unit. He could call the RTB to discuss his situation with an Information Officer, who could assist him in formulating a plan, should the need arise.

The Landlord is cautioned that the RTB now has a **Compliance and Enforcement Unit** which conducts investigations of repeated or serious and deliberate non-compliance with the tenancy laws or failure to follow orders of the Director. The unit has the authority to issue warnings to ensure compliance and if necessary, to **administer penalties of up to \$5,000.00 per day**.

Based on the above, I am not satisfied that the Tenant applied for the right claim or that a valid eviction notice has been served to the Tenant. Accordingly, I dismiss this Application without leave to reapply.

Conclusion

The Tenant's Application is dismissed without leave to reapply, because there was insufficient evidence that the Tenant had received a One Month Notice or that the Landlord is eligible for an order of possession, based on an appropriate notice to end tenancy being served with the right form and content.

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 22, 2021

Residential Tenancy Branch