



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0924203 BC LTD PHOENIX HOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, CNC, OLC, AAT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 10, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated August 01, 2021 (the “Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For an order that the Landlord allow access to the unit
- To recover the filing fee

The Tenant appeared at the hearing with T.W. to assist and act as a witness. The Tenant did not call T.W. as a witness because T.W. had left the room at the relevant time. S.B. appeared at the hearing as agent for the Landlord (the “Agent”). S.B. called T.S. as a witness during the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties, T.W. and T.S. provided affirmed testimony.

The Agent provided the correct spelling of the Landlord’s name which is reflected in the style of cause.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Agent testified that the Landlord did not receive the hearing package or Tenant's evidence and that they found out about the hearing by contacting the RTB.

The Tenant testified that they served the hearing package and their evidence on the Landlord by registered mail and provided Tracking Number 689. I looked Tracking Number 689 up on the Canada Post website which shows the package was sent November 30, 2021.

Pursuant to rule 3.1 of the Rules, the Tenant had three days from receiving the hearing package from the RTB to serve the hearing package on the Landlord. Pursuant to rule 3.14 of the Rules, the Tenant was required to serve their evidence on the Landlord not less than 14 days before the hearing.

RTB notes show the hearing package was provided to the Tenant August 27, 2021 and that the Tenant was provided service instructions on that date.

The Tenant only sent the hearing package and their evidence 13 days prior to the hearing and therefore did not comply with rules 3.1 or 3.14 of the Rules. Given this, the Application is dismissed with leave to re-apply, other than in relation to the request to recover the filing fee which is dismissed without leave to re-apply.

Section 55(1) of the *Residential Tenancy Act* (the "*Act*") states:

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. (emphasis added)

I dismissed the Application and therefore considered whether the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I excluded the Tenant's evidence, other than the written tenancy agreement and Notice, pursuant to rule 3.17 of the Rules.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the written tenancy agreement and Notice as well as the testimony of the parties and T.S. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started May 15, 2020.

The Tenant submitted the Notice which is not signed by the Landlord or Landlord's agent. I heard the parties on whether the Notice should be amended due to the absence of a signature.

The Agent submitted as follows. The Notice is signed on page one. The Tenant has been issued more than one notice to end tenancy. The Agent does not know why the Tenant received an unsigned notice to end tenancy.

The Tenant submitted that the Notice should not be amended because there is no signature on it.

I heard the Agent, T.S. and the Tenant on the grounds for the Notice. The Tenant testified that their main argument is that the Notice is a legal document and is not signed.

Analysis

As stated, section 55(1) of the *Act* states:

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.

(emphasis added)

The Notice was issued pursuant to section 47 of the *Act*. Pursuant to section 47(3) of the *Act*, the Notice must comply with section 52 of the *Act*.

Section 52 of the *Act* states:

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

(emphasis added)

I find the Notice served on the Tenant is not signed because the Tenant uploaded a copy of the Notice and it does not have a signature in the relevant box.

I find the Notice is not signed as required and therefore is not a valid notice to end tenancy. Although section 68 of the *Act* allows an arbitrator to amend a notice to end tenancy, I decline to do so because the Agent has not provided a compelling basis to do so. Further, I agree with the Tenant that the Notice is a legal document used to end a tenancy and should be completed correctly. The Notice is not completed correctly and does not comply with sections 47(3) or 52 of the *Act*. I do not find the absence of a

signature to be a minor issue because section 52 of the *Act* specifically states that the Notice must be signed, and it is not.

Given the above, I decline to issue the Landlord an Order of Possession pursuant to section 55(1) of the *Act* because the Notice does not comply with section 52 of the *Act* as required. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

The Application is dismissed with leave to re-apply, other than in relation to the request to recover the filing fee which is dismissed without leave to re-apply.

I decline to issue the Landlord an Order of Possession because the Notice does not comply with section 52 of the *Act*. The Notice is cancelled. The tenancy will continue until otherwise 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 *Act*.

Dated: December 13, 2021

Residential Tenancy Branch