



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harron Investment Inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 9, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice").

The Tenant, and the Landlord's Agents D.M., D.S., and T.G. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Section 59 of the *Act* provides that an Application for Dispute Resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceeding. Rules 2.5 and 3.1 require that a tenant disputing a notice to end tenancy must provide a copy of the notice to end tenancy they seek to dispute at the time of filing the Application for Dispute Resolution and serve it upon the respondent along with the proceeding package. These requirements are in keeping with the principles of natural justice and intended to ensure a fair proceeding.

Below, I have reproduced Rule 2.5 for the parties' reference:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

[My emphasis underlined]

If a document is not available at the time of filing, an applicant may submit the document as soon as possible but not later than 14 days before the hearing, as provided under Rule 3.14.

In seeking to cancel a notice to end tenancy, I can think of no other document that is more relevant than the notice to end tenancy. The Tenant did not provide a copy of the notice to end tenancy she seeks to cancel when he filed, at any other time, for my review or with the hearing package he sent to the Landlord. The Tenant did not provide a reason for not providing the notice to end tenancy. Therefore, I find the Tenant's actions, or lack thereof, to be a violation of the requirements of section 59 of the Act and Rules 2.5 and 3.1 of the Rules of Procedure.

The Landlord's Agent stated that he has never needed to submit a copy of the Notice in previous dispute resolution proceedings. According to the Residential Tenancy Policy Guideline 2B "The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive." I find that it would be just as important for the Landlord to provide a copy of the notice to end tenancy which contains the reason the Landlord is seeking to end the tenancy, when

forming their case to demonstrate their intent to occupy the rental unit. The Landlord failed to do so.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

Section 52 of the Act states; 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.

In light of the above, I dismissed the Tenant's application to dispute the notice to end tenancy. I do not provide the Landlord with an Order of Possession as provided under section 55(1) of the *Act* as I do not have a copy of a notice to end tenancy before me and I am unable to verify that the notice complies with the form and content requirements of Section 52 of the *Act*. The Landlord is at liberty to file their own Application for Dispute Resolution to seek an Order of Possession if they feel entitled to one.

Conclusion

Neither party provided a copy of the Two Month Notice for my consideration. The Tenant's Application is dismissed pursuant to Section 59 of the *Act*. The Landlord is not entitled to an order of possession under Section 55 of the *Act*, given I am unable to confirm the Two Month Notice complies with the requirements under Section 52 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: January 25, 2022

Residential Tenancy Branch