



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Balay Management LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, RR, RP, PSF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On November 14, 2021, the Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for End of Employment;
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs made to the unit, having contacted the Landlord in writing; and
- an order for the Landlord to provide services or facilities required by the tenancy agreement or law.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified she served her Notice of Dispute Resolution Proceeding and evidence on the Landlord in person on November 16, 2021, and the Landlord confirmed she received the Tenant's documents. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified she did not serve her responsive evidence on the Tenant. I find the Landlord did not serve the Tenant in accordance with section 88 of the Act. I therefore informed those present I would not be considering the Landlord's evidence.

Preliminary Matters

As the Tenant had applied to cancel a One Month Notice to End Tenancy for End of Employment, but from her application it appeared the Tenant had not been an employee of the Landlord, I confirmed with the parties that the Landlord had served the Tenant with a One Month Notice to End Tenancy for Cause, dated November 3, 2021 (the One Month Notice), and that the Tenant had applied to dispute the One Month Notice to End Tenancy for End of Employment in error, intending to dispute the One Month Notice for Cause.

Therefore, I find it reasonable to amend the application in accordance with Residential Tenancy Branch Rule of Procedure 4.2.

Rule of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss the Tenant's claims, except for her dispute of the One Month Notice.

Issues to be Decided

- 1) Is the Tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began December 1, 2020, rent is due on the first of the month, and the Tenant paid a security deposit of \$705.00, which the Landlord still holds.

The Landlord stated that rent is \$1,490.00; the Tenant stated that rent is \$1,410 and parking is \$80.00 a month.

The Landlord testified the One Month Notice was served on the Tenant by posting it to the door on November 3, 2021; the Tenant confirmed receiving it on the same day.

While I had informed the parties I would not be considering the Landlord's evidence as it was not served on the Tenant, in the hearing I referred to the Landlord's submitted copy of the One Month Notice, as the Landlord and Tenant confirmed it had been served on the Tenant. The Tenant had only uploaded page 1 of the One Month Notice as evidence, and I needed to see the whole Notice in order to consider it.

A portion of the One Month Notice was submitted by the Landlord as evidence. Page 1 of the Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, and is in the approved form. Page 2 is not from the One Month Notice form, RTB-33, but is page 2 from the Proof of Service form, RTB-34. Page 2 of the One Month Notice form was not in the Landlord's submitted evidence.

During the hearing, I described what was written on the two pages, and asked the Landlord if these two pages were what had been served on the Tenant.

The Landlord testified that the two pages I had described were what was served on the Tenant. The Landlord sounded quite confused as I explained that the page 1 was from the One Month Notice form, and the page 2 was from the Proof of Service form.

The Tenant testified she was served only page 1 of the One Month Notice by the Landlord.

Later in the hearing, the Landlord changed her testimony, stating that the complete One Month Notice was posted to the Tenant's door.

Analysis

Section 47 of the Act permits a landlord to end a tenancy for cause.

Section 47(3) states:

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

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.

Based on the affirmed testimony of the parties, I find the Landlord did not serve a complete copy of the One Month Notice on the Tenant. Therefore, the portion of the Notice served on the Tenant is not effective, pursuant to section 52.

Conclusion

The Tenant's application is granted.

The tenancy will 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: February 24, 2022

Residential Tenancy Branch