



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, OLC, MNDCT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order to cancel a One-Month Notice to End Tenancy (the “One-Month Notice”) pursuant to s. 47;
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- An order for monetary compensation pursuant to s. 67; and
- Return of his filing fee pursuant to s. 72.

J.T. appeared as Tenant and was joined by S.K.. The Landlord was represented by counsel, D.M.. H.M. appeared as agent and owner for the Landlord. M.N. appeared as property manager for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenant advises that he served the Notice of Dispute Resolution and his evidence on the Landlord, both of which were acknowledged received by the Landlord. No objections were raised with respect to service. Accordingly, I find that pursuant to s. 72(1) of the *Act* that the Landlord was sufficiently served with the Tenant’s application materials.

The Landlord advised that they served the Tenant with responding evidence and the Tenant acknowledges its receipt on February 2, 2022. The Tenant similarly raised no objections with respect to service. Accordingly, I find that pursuant to s. 72(1) of the *Act* that the Tenant was sufficiently served with the Landlord’s response evidence.

Preliminary Issue – Amending the Style of Cause

At the outset of the hearing, I clarified with the Landlord's agents who, in fact, was the Landlord. The Landlord confirmed that the corporate Landlord, as listed in the tenancy agreement, is the correct Landlord. The Tenant raised no objections with respect to the amendment. Accordingly, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the corporate Landlord as listed in the tenancy agreement.

Issue(s) to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Should the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement?
- 4) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit sometime in November 2019.
- Rent of \$1,000.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$500.00 in trust for the Tenant.

A copy of a written tenancy agreement signed in May 2021 was put into evidence. M.N. says that the delay in having the written tenancy agreement put together was an administrative error and that there was no written tenancy agreement prior to May 2021.

The rental unit is in a motel. The parties confirmed that the residential property is rented to long-term tenants, such as the Tenant, and to short-term occupiers as a standard motel. The residential property was described as a horseshoe with a parking lot located in the central area.

The Landlord says that they served the Tenant with the One-Month Notice by posting it to the Tenant's door on September 10, 2021. The Tenant acknowledges receipt of the One-Month Notice.

The One-Month Notice comprises of a typed letter dated September 6, 2021. Landlord's counsel acknowledges it is not in the proper form and argues I correct the deficiency under s. 68 of the Act.

The One-Month Notice was issued on the basis that the Tenant parks multiple vehicles at the property. The notice states the following:

For almost the last two years you have been parking 2-3 vehicles all the time. Either you can pay monthly \$250.00 extra for each parking space you have occupied from now onward, apart from the one vehicle which is allowed. Otherwise you can leave the property on or before the date we have mentioned above.

The effective date in the typed out One-Month Notice is listed as October 5, 2021.

The tenancy agreement lists under clause 7 that the Tenant is permitted one vehicle. The Landlord says that he currently has four vehicles, which includes a logging truck. They say the logging truck is disruptive to the other occupants of the residential property. The Landlord further states that the Tenant warms up his logging truck between 3:00 AM or 4:00 AM. The Landlord says this disturbs occupants and guests, which has adversely affected the motel business.

The Tenant does not deny having multiple vehicles nor deny having a logging truck. He says that he does warm up his logging truck in the morning for 10 minutes such to charge the air so that he can release its air brakes. The Tenant acknowledges this happens before 6:00 AM when he is working.

The Tenant denies receiving a written notice his excess vehicles and notes that he has occupied his rental unit for many years. Throughout that time, the Tenant says he's had these vehicles and says that the Landlord consented to this arrangement.

Analysis

The Tenant seeks to set aside the One-Month Notice as well as other relief.

A Landlord may end a tenancy for cause, with those causes listed under s. 47 of the *Act*, after issuing a notice to end tenancy not earlier than one month after the notice is received and the day before that rent is payable under the tenancy agreement.

The Landlord here argues that the One-Month Notice was issued under s. 47(1)(h), which would be the breach of a material term of the tenancy agreement that has not been corrected by the tenant within a reasonable period after being given written notice to do so by the landlord.

Pursuant to s. 47(3) of the *Act*, a notice to end tenancy issued by a landlord under s. 47 must comply with s. 52 of the *Act*. Section 52 states the following:

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.

(Emphasis Added)

Landlord's counsel acknowledges that the One-Month Notice is not in the proper form, which in this case should have been in form RTB-33. I am asked to correct this deficiency by using s. 68(1) of the *Act*. Under s. 68, I may correct a notice to end tenancy that does not comply with s. 52 if the person receiving it knew, or should have known, the information was omitted from the notice and it would be reasonable to do so under the circumstances.

Landlord's counsel says that the content of the One-Month Notice complies with s. 52 and that there would be no prejudice to the Tenant to correcting the notice.

I am not persuaded that it would be proper to use s. 68(1) in the manner suggested by Landlord's counsel. The wholesale amendment of a notice such that it complies with s.

52(e) of the *Act* would essentially render that portion of the *Act* meaningless and permit the Landlord to avoid their clear obligation to use the approved form. The language under s. 47(3) and 52(e) is not permissive. The Landlord must use the approved form. Section 68(1) is intended to correct information that has been omitted from a notice, such a postal code or the like, not the complete recreation of the approved form for a one-month notice to end tenancy.

I find that the One-Month Notice is not in the approved form and does not comply with the formal requirements set out under s. 52 of the *Act*. Accordingly, the One-Month Notice is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant seeks an order that the Landlord comply with the *Act*. However, the Tenant's application does not particularize the nature of this claim. As set out under Rule 2.2 of the Rules of Procedure, a claim is limited to what is stated in the application. As the Tenant's claim was insufficiently particularized, I dismiss the Tenant's claim under s. 62 of the *Act* with leave to reapply.

The Tenant makes an additional claim under s. 67. In the Tenant's application, it appears that this is for the return of his \$100.00 filing fee. Thus, this portion of his claim is a replication of his claim under s. 72 for return of his filing fee. Accordingly, his claim under s. 67 is dismissed without leave to reapply.

Conclusion

The One-Month Notice is of no force or effect as it does not comply with s. 52 of the *Act*. The tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant's claim under s. 62 that the Landlord comply with the *Act* was not sufficiently particularized in his application. I dismiss this with leave to reapply.

The Tenant's claim under s. 67 was made in error and is a replication of his claim for return of his filing fee under s. 72. The Tenant's claim made in error under s. 67 is dismissed without leave to reapply.

As the Tenant was successful, I find that he is entitled to the return of his filing fee. I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenant's filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenant withhold

\$100.00 from rent due to the Landlord on **one occasion** in full satisfaction the Tenant's filing fee.

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 15, 2022

Residential Tenancy Branch