



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On October 22, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 11-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term, and she provided a solemn affirmation.

She advised that the Landlord was served with the Notice of Hearing and evidence package by registered mail on or around October 25, 2021 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to an Order to comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on or around May or June 2017; however, she is not sure as the Landlord will not provide her with a copy of the written tenancy agreement despite her requests for a copy. She stated that rent was currently established at \$832.30 per month and that it was due on the first day of each month. A security deposit of \$400.00 was also paid.

She submitted that the Notice was emailed to her, without her consent, on October 18, 2021 and she only happened to find it in her spam folder. A copy of this Notice was provided as documentary evidence. The effective date on the Notice was noted as November 22, 2021; however, this date is incorrectly noted by the Landlord and it will automatically self-correct to November 30, 2021 as per Section 53 of the *Act*.

She advised that she is seeking an Order to comply as the Landlord will serve documents by email, which was never agreed to. Alternately, if the Landlord serves documents in a manner in accordance with the *Act*, the Landlord will not comply with the deeming provisions of the *Act*. For example, if the Landlord posts a notice for entry onto the Tenant's door, the Landlord will then enter 24 hours later without first waiting the three days for the notice of entry to be deemed received.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I find it important to note that the burden of proof is on the Landlord to substantiate the reasons for ending the tenancy. As the Landlord did not attend the hearing or provide evidence to justify why the Notice was served, I am not satisfied that the Landlord has established any grounds to substantiate service of the Notice. Therefore, I find that the Notice is cancelled and of no force and effect.

With respect to the Tenant's request for an Order to comply, I find it important to note that Section 90 of the *Act* outlines when documents are deemed to be received depending on the method upon which they were served. This Section states that any document posted to the Tenant's door is deemed received after three days. Thus, if the Landlord posts a notice to enter the rental unit on the Tenant's door, the Landlord must wait three days for the notice to be deemed received, and then must wait an additional 24 hours to enter pursuant to Section 29 of the *Act*. The Landlord is **Ordered** to abide by the requirements of the *Act*. The Landlord is encouraged to consult Policy Guideline #12 regarding service provisions if the Landlord is confused about when and how to serve documents.

If the Landlord continues to breach these requirements, the Landlord is cautioned that the Tenant can apply for Dispute Resolution setting limits on the Landlord's right to enter the rental unit. As well, any continued breaches after this Order would also likely set the Tenant up for an Application for monetary compensation against the Landlord.

Regarding the Tenant's request for documents such as a copy of the tenancy agreement, Section 13(3) of the *Act* requires the Landlord to provide the Tenant a copy of this agreement within 21 days after the start of the tenancy agreement. The Landlord is **Ordered** to provide the Tenant a copy of this agreement **within 21 days of this Decision**. Should the Landlord fail to comply with this Order, the Tenant could possibly apply for Dispute Resolution seeking a request for monetary compensation due to the Landlord's failure to comply. As a note, the Landlord is also required to provide other documents to the Tenant, such as a copy of the condition inspection report, and the Landlord should provide these documents as well if they have not already done so.

Finally, with respect to service of documents by email, I find it important to note that as of March 1, 2021, email service of documents was adopted. However, Policy Guideline #12 provides guidance with respect to service of documents by email, as noted below. If the parties have not agreed to service of documents by email, then the parties should rely on Section 88 of the *Act* with respect to how to serve documents generally. Section 44 of the *Residential Tenancy Regulations* states that any document served by email is deemed received after three days.

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. A person who does not regularly check their email should not provide an email address to the other party for service purposes.

A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - “Address for Service” form and provide it to the other party.

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method. If no other method of service is successful, a party may apply for a substituted service order (RTB-13 - Application for Substituted Service), asking for an order allowing service by email, and provide evidence of a history of communication between the parties at that email address. Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.

If an email address given for the purposes of serving documents changes at any time, the onus is on the party to ensure an updated address is provided to the other party, or that the other party is advised that it is no longer acceptable to serve documents at the email address provided. If such notice is received, email service is no longer a method of service available to serve documents and another method of service set out in the legislation must be used instead.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause in relation to this Application, dated October 18, 2021, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Landlord has also been Ordered to comply with the *Act*. Failure to do so may result in future Applications made by the Tenant against the Landlord.

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: March 1, 2022

Residential Tenancy Branch