



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction, Preliminary and Procedural Matters-

This hearing was re-convened as the result of the landlord's successful Application for Review Consideration.

This dispute began as a result of the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The tenants applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord.

On January 18, 2022, an arbitrator granted the tenants' application and cancelled the Notice. That Decision is incorporated herein by reference and should be read in conjunction with this decision.

The landlords filed the Application for Review Consideration on the basis of fraud, which resulted in a Decision by another arbitrator with the Residential Tenancy Branch (RTB), on January 26, 2022, granting the landlord a new hearing on the tenants' original application for dispute resolution. That Decision is incorporated herein by reference and should be read in conjunction with this decision.

Under section 82(3), following this new hearing, I may confirm, vary, or set aside the original Decision and order.

At this new hearing, the tenants and the landlord and agent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the RTB Rules of Procedure.

The parties did not raise issues regarding service of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules.

Issue(s) to be Decided

Should the original Decision be confirmed, varied, or set aside?

Should the 1 Month Notice be cancelled?

Background and Evidence

The Notice to End Tenancy for Cause, which is the subject of this application, was dated November 1, 2021, for an effective move out date of December 31, 2021. Both parties filed a copy of the Notice.

The landlord marked the boxes on the Notice, which alleged that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

In the Details of Causes portion of the Notice, the landlord was instructed to "Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered)." In this box, the landlord wrote nothing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a Notice to end a tenancy the onus is on the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is

valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

I have reviewed the Notice and I find the landlord did not provide any Details of Causes and I therefore find the Notice insufficient for the tenant to properly rebut the Notice.

The landlord is instructed on the Details of Causes to describe what, where, and who caused the issue and include dates/times, names, etc. The landlord, on the Notice form, is informed that this evidence is required, or the Notice may be cancelled.

For these reasons, I find the Notice does not comply with section 52(d) and (e) of the Act and is invalid as it does not state the “Details of Cause(s)” portion which would set out the specific allegations of the causes listed by the landlord on the Notice. Therefore, I find the Notice is not valid as it is missing necessary and required information. The Act requires that notices to end tenancy issued by the landlord be in the approved form due to the fact that the approved forms contain all of the required information a tenant would need to dispute the Notice, if necessary.

As a result, I **ORDER** that the One Month Notice dated November 1, 2021, is cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the Act.

On this basis, I **set aside** the original Decision of the arbitrator dated January 18, 2021, pursuant to section 82(3) of the Act, cancelling the Notice due to the fact that I cancelled the Notice for reasons other than the original arbitrator.

Conclusion

The tenants’ application is successful. The 1 Month Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the *Act*.

The original Decision in this matter of January 18, 2021, is set aside.

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*. Pursuant to

section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 9, 2022

Residential Tenancy Branch