



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord make repairs and to provide services and facilities required by law or the tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and her advocate.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by placing it the office mailbox on February 9, 2022 and that this service was witnessed by a third party. Section 90 of the *Act* deems documents served in such a manner to be received on the 3rd day after they have been placed in the mailbox.

However, the placing an Application for Dispute Resolution and hearing documents in a mailbox is not an allowable method of service under Section 89 of the *Act*. The tenant submitted that while she has been living in the rental unit for about 2 ½ years her landlord changed about a year ago. When the landlord changed, she was never introduced to or provided any contact information for the new landlord.

In addition, the Notice to End Tenancy submitted into evidence did not identify who the actual landlord is or provide their contact information other than "Office" at the street address. The tenant submitted that while they attempted to serve the landlord by registered mail, Canada Post would not accept "Office" as part of the street address. As a result, the tenant could not serve these documents in a manner allowed under the *Act*.

Based on the undisputed testimony of both the tenant and her advocate, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim for repairs or to have the landlord provide services and facilities. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss the tenant's claim for repairs or to have the landlord provide services and facilities. I grant the tenant leave to re-apply for these other claims.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The tenant acknowledged that on or about January 14, 2022, she received a One Month Notice to End Tenancy for Cause and she submitted a copy of this Notice into evidence.

The One Month Notice is undated and unsigned by the landlord but states an effective vacancy date of February 20, 2022 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Analysis

Residential Tenancy Branch Rule of Procedure 6.6 states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as

claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In the case before me, the tenant has disputed a notice to end tenancy and seeks to cancel the Notice. Pursuant to Rule of Procedure 6.6 I find the burden rests with the landlord to establish they have cause, allowed under the *Act*, to do so. As the landlord has failed to attend this hearing and present their reasons for ending the tenancy, I find the landlord has failed to establish they have cause to end the tenancy.

Furthermore, Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I note that the Notice to End Tenancy submitted into evidence does not have a date or signature of the landlord and is therefore I find the Notice not compliant with Section 52 of the *Act*.

Conclusion

Based on the above, I grant the tenant's Application for Dispute Resolution and cancel the One Month Notice to End Tenancy for Cause received by the tenant on January 14, 2022 is not valid or enforceable and is therefore cancelled. I order the tenancy remains in full force and effect until 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: April 04, 2022

Residential Tenancy Branch