



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LRE, OLC**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- cancellation of a notice to end the tenancy for cause dated January 29, 2022 ("Notice") pursuant to section 47;
- an order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to section 70; and
- an order for the Landlord to comply with the Act, the *Residential Tenancy Regulations* (the "Regulations") and/or tenancy agreement pursuant to section 62.

The Landlord and Tenant attended the hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Landlord with the NDRP by email but he could not recall the date. The Landlord stated he received the NDRP. I find the Landlord was sufficiently served with the NDRP pursuant to section 71(2)(b) of the Act.

The Landlord submitted evidence to the Residential Tenancy Branch, but it appears that he did not serve it on the Tenant.

Preliminary Matter – Jurisdiction to Hearing Application

The Landlord stated that, when the tenancy commenced on December 1, 2021, the Landlord and Tenant temporarily shared bathroom facilities, but they did not share the kitchen facilities. However, the Landlord stated the Tenant started giving the Landlord

“attitude” and the Landlord stopped using the bathroom facilities after December 8, 2021.

Section 4(c) of the Act states:

- 4** This Act does not apply to
[...]
(c) living accommodation in which the tenant shares bathroom or kitchen
facilities with the owner of that accommodation,
[...]

I find that, as the Landlord only used the bathroom temporarily at the commencement of the tenancy, this tenancy is not exempted from the provisions of the Act pursuant to section 4(c) of the Act.

Preliminary Matter – Severance and Dismissal of Tenants’ Claim

In addition to seeking cancellation of the Notice, the Application makes two claims (“Other Claims”) for (i) an order to suspend or set conditions on the Landlord’s right to enter the rental unit and; (ii) an order that the Landlord comply with the Act, Regulations and/or tenancy agreement. Rule 2.3 of the Rules 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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

Pursuant to Rule 2.3, I sever the Other Claims from the Application and will dismiss them with leave to reapply if I cancel the Notice or dismiss them without leave to reapply if I grant an Order of Possession to the landlord.

Issues to be Decided

- is the Tenant entitled to cancellation of the Notice?
- if the Tenant is not entitled to cancellation of the Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted a copy of the tenancy agreement between the parties. The tenancy commenced on December 1, 2022, for a fixed term ending May 31, 2022, with rent of \$675.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$337.50. The parties agreed the Tenant has not vacated the rental unit.

The Landlord stated he served the Tenant with the Notice to end the tenancy for cause on the basis that the Tenant had breached the tenancy agreement by smoking marijuana in the rental unit. The Notice stated the Tenant was to vacate the rental unit on February 28, 2022. The Notice does was not given on the form approved by the Director of the Residential Tenancy Branch ("RTB").

Analysis

Subsections 47(1) through 47(4) and 52 of the Act state in part:

- 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

[...]

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) *A notice under this section must comply with section 52 [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 in italics added]

I have reviewed the Notice served by the Landlord on the Tenant and find it is not on Form RTB-33. As it is not on Form RTB-33 it is not in the approved form required by the Director of the RTB. As such, I find the Notice does not comply with section 52 of the Act. Based on the foregoing, the Notice was invalid under section 47(3) of the Act and was not effective to end the tenancy. The tenancy continues until ended in accordance with the provisions of the Act.

The Tenant's claims for (i) an order to suspend or set conditions on the Landlord's right to enter the rental unit and; (ii) an order that the Landlord comply with the Act, Regulations and/or tenancy agreement are dismissed with leave to reapply.

Conclusion

The Notice was invalid and has no effect on the tenancy. The tenancy continues until ended in accordance with the provisions of 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: May 22, 2022

Residential Tenancy Branch