



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application, filed on January 31, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated January 24, 2021 ("1 Month Notice"), pursuant to section 47.

The landlord, the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 32 minutes.

The hearing began at 9:30 a.m. with me, the landlord, and the tenant present. The tenant's advocate called in late at 9:34 a.m. I did not discuss any evidence with both parties in the absence of the tenant's advocate. This hearing ended at 10:02 a.m.

The landlord, the tenant, and the tenant's advocate provided their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that he owns the rental unit. He provided the rental unit address.

The tenant confirmed that his advocate had permission to speak on his behalf at this hearing.

At the outset of this hearing, I informed both parties that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing

by any party. The landlord, the tenant, and the tenant's advocate all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

At the outset of this hearing, both parties confirmed that they wanted to engage in settlement discussions. I provided approximately 15 minutes during this hearing for both parties to discuss a settlement privately. Both parties confirmed that they were unable to reach a settlement agreement at this hearing. They asked that I make a decision regarding this application.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord's first name. Both parties consented to this amendment during this hearing.

Preliminary Issue – Cancellation of 1 Month Notice

During this hearing, the landlord, the tenant, and the tenant's advocate all confirmed that they did not have copies of the 1 Month Notice in front of them. The landlord asked if the tenant's advocate could email him a copy of the notice during this hearing. However, the tenant's advocate stated that she did not have a copy of the notice in front of her either.

Therefore, neither party could confirm the dates, details, or reasons indicated on the 1 Month Notice. I informed both parties that they were required to have copies of the notice in front of them during this hearing to confirm the details on the notice, since it is the subject of this hearing.

The tenant provided a copy of the landlord's 1 Month Notice using an old RTB form, dated March 2011. The date of the notice is January 24, 2021, and the effective move-

out date is February 28, 2021. The landlord could not confirm any of the above dates during this hearing because he did not have the notice in front of him.

The above dates on the 1 Month Notice are over one year prior to the tenant filing this application on January 31, 2022, and this hearing occurring on May 13, 2022. In his application, the tenant indicated that he personally received a copy of the landlord's 1 Month Notice on January 24, 2022. This is one year after the date on the notice of January 24, 2021.

I informed both parties that I could not extend the effective move-out date on the notice, since it has been over one year, as per section 66(3) of the *Act*.

Sections 47 and 52 of the *Act*, state in part (my emphasis added):

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

...

(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**

(c) state the effective date of the notice

...

(e) when given by a landlord, be in the approved form.

The landlord did not issue a 1 Month Notice to the tenant in the approved RTB form, as required by sections 47 and 52 of the *Act*. The landlord used a form, dated March 2011, that is no longer available or approved by the RTB. The form is over 11 years old.

The current approved RTB form is dated November 30, 2021 and requires the details of cause to be described on page 2 of the notice, as follows (my emphasis added):

*Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. **This information is required. An arbitrator may cancel the notice if details are not provided.***

The landlord did not include the above required details in its 1 Month Notice, as the 2011 form does not include or require this information.

Further, the landlord appears to have included the wrong year of 2021 on the date of the notice and the effective move-out date. The current year is 2022 and the tenant claimed that he received the notice in 2022.

On a balance of probabilities and for the above stated reasons, the landlord's 1 Month Notice, dated January 24, 2021, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. I informed both parties of my above decision verbally during this hearing. Both parties confirmed their understanding of same.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is granted.

The landlord's 1 Month Notice, dated January 24, 2021, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession.

This tenancy continues until it is 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: May 13, 2022

Residential Tenancy Branch