



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant applied for the following:

- an order cancelling a One Month Notice to End Tenancy dated February 28, 2022 (“1 Month Notice”); and
- authorization to recover the filing fee for the Application from the Landlord.

The Landlord and Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant testified he served the Notice of Dispute Resolution Proceeding and his evidence (“NDRP Package”) on the Landlord by email on March 10, 2022. The Tenant submitted a signed Address for Service on Form RTB-51 in which the Landlord and Tenant consented to service of documents by email. The Landlord acknowledged receipt of the NDRP Package by email. I find the NDRP Package was served on the Landlord pursuant to the provisions of sections 88 and 89 of the Act.

The Landlord testified he served his evidence on the Tenant by two emails dated May 18 and May 31, 2022. The Tenant acknowledged receipt of the Landlord’s evidence by email. I find the Landlord’s evidence was served on the Tenant in accordance with the Act.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the Tenant is not entitled to cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) 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 parties agreed the tenancy commenced April 1, 2021, for a minimum period of 6 months, with rent of \$800.00 payable on the 1st day of each month. The Tenant was to pay the Landlord a security deposit of \$400.00 by March 22, 2021. The Landlord acknowledged the Tenant paid the security deposit and that he is holding it in trust on behalf of the Tenant. I find there is a tenancy for the rental unit between the parties.

The Landlord admitted the 1 Month Notice was not given on Form RTB-33.

The Landlord stated the Tenant has served him with a notice to end tenancy that is effective on June 30, 2022. The Tenant acknowledged he served the Landlord with notice to end the tenancy on June 30, 2022.

Analysis

Subsections 47(1), 47(3) and 47(4) 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:
- [...]
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

[emphasis in italics added]

The Landlord stated he served the 1 Month Notice on the Tenant by email on February 28, 2022. Pursuant to section 47(4), the Tenant had 10 days, being March 10, 2022, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the Residential Tenancy Branch disclose the Application was filed by the Tenant on February 28, 2022. Accordingly, the Application was filed within the 10-day dispute period.

Section 52 of the Act states:

- 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]

The Landlord admitted that he did not use the approved One Month Notice to End Tenancy on Form RTB-33 as required by section 52(e) of the Act. As such the 1 Month Notice does not comply with section 47(3) of the Act and, therefore, is not valid to end the tenancy under section 47(1) of the Act. Based on the above, I order the 1 Month Notice cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in the Application, he may recover the \$100.00 filing fee for the Application from the Landlord pursuant to section 72(1) of the Act.

Conclusion

I allow the Application to cancel the 1 Month Notice. The 1 Month Notice is of no force or effect. The tenancy continues until ended in accordance with the Act.

Pursuant to section 72(1) of the Act, I order the Landlord pay the Tenant \$100.00 to reimburse him for the filing fee for the Application.

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: June 10, 2022

Residential Tenancy Branch