



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHEILA FERNIE FAMILY HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNOP

Introduction

This Review Hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to cancel an Order of Possession granted in favour of the landlord at a previous hearing. The tenant was successful with an application for Review on the ground that the tenant did not attend the original hearing due to circumstances that could not be anticipated and were beyond the tenant's control. The application for Review followed the original hearing on March 7, 2022 wherein the landlord had obtained an Order of Possession.

The tenant and an agent for the landlord attended the Review Hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions, however the tenant found it very difficult to refrain from interrupting even after several warnings.

The landlord's agent testified that the tenant has been provided with all evidentiary material of the landlord, which was not disputed by the tenant. The tenant has filed numerous documents, many on the day of the Review Hearing which was not provided to the landlord. Any evidence that a party wishes to rely on must be provided to the other party, and the tenant applied to adjourn the Review Hearing. The tenant did not give any reasons for failing to provide the landlord with evidence, and I declined the request to adjourn. Since the tenant has not provided all evidence to the landlord, I decline to consider the tenant's evidence that was uploaded to the Residential Tenancy Branch system the day of the hearing. All other evidence has been reviewed and is considered in this Decision.

The *Residential Tenancy Act* states that after a Review Hearing, I may confirm, vary or set aside the original Decision and/or Order.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on May 1, 2015 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$529.00 per month payable on the 1st day of each month, however rental arrears totaling \$4,106.00 are outstanding for the months of December, 2021 through June, 2022. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$494.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 2-story townhouse, and the landlord's agent does not reside on the rental property.

The landlord's agent further testified that on November 30, 2021 the tenant was personally served with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated November 30, 2021 and contains an effective date of vacancy of December 31, 2021. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

It is not addressed to anyone, however the landlord's agent testified that it was served with a witness present and the tenant signed it.

The tenant has had altercations with a next door neighbour and the tenant was charged and convicted of assault. The next door neighbour was not charged. The landlord has also provided a written statement stating that on April 27, 2021 there was an altercation between two tenants, and the landlord explained to them that "... after their court case was finished and a verdict was set down that there was a possibility that one of them could be convicted."

The tenant testified that the landlord's agent lies. Rent is paid and the tenant has never asked for a receipt nor has been given one.

The tenant could not afford a good lawyer, only Legal Aid counsel, who didn't provide any of the tenant's evidence. The tenant was convicted, but has not assaulted anyone, but just had a terrible lawyer. The tenant has been assaulted the whole time, and called police to get video evidence, which will take a month. The neighbour overdosed last year and the fire department had to knock down her door. This has been vindictive, and the tenant has been there for 7 years.

The tenant has been arrested for ridiculous reasons and is charging the police, and had a miscarriage from an arrest. Police also removed the tenant from her boyfriend's house 2 weeks after the tenant had died for minutes, and wasn't supposed to be alone. The tenant is dying, had a miscarriage and nothing but abuse from the landlord and the neighbour.

The tenant has always paid rent. The landlord's agent cannot think straight due to her own health issues.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice), and I find that it is an older version of the form, however is an approved form.

The form of the Notice states:

TO the TENANT(s) (full names are required). If additional space is required to list all parties, use and attach *Schedule of Parties* (form RTB-26).

The form also provides spaces to write the tenant's name and address for service, and neither are completed, although the address of the rental unit is contained in the lower portion of the form.

I have also reviewed the original Decision dated March 7, 2022, which deals with the lack of information in the Notice:

“I find that the One Month Notice to End Tenancy for Cause complies with section 52 of the Act. Although the One Month Notice to End Tenancy for Cause

does not name the Tenant, naming the Tenant is not required by section 52 of the Act.

“Although the One Month Notice to End Tenancy for Cause does not name the Tenant, I find it reasonable to conclude that the Tenant understood the Notice was for her. I find it reasonable to conclude that the Tenant understood the One Month Notice to End Tenancy for Cause was intended for her, as it was personally handed to her and she applied to dispute it. I therefore find that the absence of the Tenant’s name does not affect the validity of the Notice.”

Section 68 of the *Residential Tenancy Act* states:

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

(2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or

(b) set aside or amend a notice given under this Act that does not comply with the Act.

In this case, there is nothing in the March 7, 2022 Decision, nor did the landlord testify that any amendment to the Notice was applied for by the landlord. Section 52 sets out the requirements, however the content of the Notice is incomplete.

Since the Notice is not directed to the tenant or to anyone, I find that the landlord has not complied with the instructions of the content required in the approved form.

In consideration of the evidence and testimony provided, the only evidence by the landlord to prove the reasons for ending the tenancy is a conviction of assault. However, the reasons for the conviction have not been provided, and there is no evidence before me that the tenant wasn’t also assaulted.

The landlord, since the March 7, 2022 hearing has also provided additional evidence, such as that the tenant no longer qualifies for subsidized housing and allegations of unpaid rent, however none of those are reasons for issuing the One Month Notice to End Tenancy for Cause, and therefore are not relevant to this Review Hearing.

As mentioned above, following a Review Hearing, the *Act* specifies that I may confirm, vary or set aside the original Decision and/or Order, and I set aside both. The Order of Possession and the One Month Notice to End Tenancy for Cause are cancelled and the tenancy continues.

Conclusion

For the reasons set out above, the Decision and Order of Possession dated March 7, 2022 are hereby set aside.

The One Month Notice to End Tenancy for Cause dated November 30, 2021 is hereby cancelled and the tenancy continues.

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: July 04, 2022

Residential Tenancy Branch