



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

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”) in which the Tenant applied for an order cancelling a One Month Notice to End Tenancy dated January 5, 2022 (“1 Month Notice”) pursuant to section 47 of the Act.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 9:48 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord’s agents (“KL” and “KG”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that KL, KG and I were the only ones who had called into this teleconference.

Although the Tenant was not present at the hearing, KL acknowledged the Tenant served the Landlord with the NDRP in-person on January 25, 2022. I find that the Landlord was served the NDRP in accordance with the provisions of section 89 of the Act. KL stated the Tenant did not serve any evidence on the Landlord.

KL stated the Landlord served some of its evidence on the Tenant by registered mail on March 4, 2022. KL provided the Canada Post tracking number for service of the evidence on the Tenant to corroborate her testimony. KL stated the Landlord subsequently served additional evidence, consisting of the latest account for the rental unit, on the Tenant’s door on July 7, 2022. Based on the undisputed testimony of KL, I find the Tenant was served by the Landlord with the Landlord’s evidence in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

Given the Tenant did not attend the hearing within 10 minutes of its commencement, the Application is dismissed without leave to reapply.

Rule 7.4 of the RoP states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the Tenant did not participate in the hearing, his evidence was not presented as required by Rule 7.4 of the RoP. As such, I will not consider any evidence submitted by the Tenant in advance of the hearing when adjudicating the Application.

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

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.

Notwithstanding the Application has been dismissed, Rule 6.6 provides the Landlord bears the burden of proof it is more likely than not that 1 Month Notice is valid. Based on the foregoing, the Landlord must meet this burden even though the Tenant did not participate in the hearing.

Issue to be Decided

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 SM and the Landlord, 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.

KL stated the Landlord purchased the residential property from the predecessor landlord ("BP"). KL stated the tenancy agreement between the Tenant and BP stated the tenancy commenced on November 1, 2018, with a fixed term ending October 31, 2019, with rent of \$1,608.00 payable on the 1st day of each month. KL stated the current rent is now \$1,628.00. KL stated the Tenant currently has rental arrears of \$2,494.00. KL stated the Tenant paid a security deposit of \$804.00 to BP. KL stated the pet damage deposit was transferred to the Landlord by BP and the Landlord is holding it in trust on behalf of the Tenant.

KL stated the 1 Month Notice was served on the Tenant's door on January 5, 2022. The 1 Month Notice stated the reason for ending the tenancy was the Tenant was repeatedly late paying rent. No details were provided in the 1 Month Notice for the cause for ending the tenancy. KL admitted the details were overlooked when the 1 Month Notice was prepared and acknowledged that there were no attachments to the 1 Month Notice that provided details for the cause for ending the tenancy.

Analysis

Subsections 47(1(b)) and sections 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:
- [...]
- (b) the tenant is repeatedly late paying rent;
- [...]
- (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]

KL stated the Landlord served the 1 Month Notice on the Tenant's door on January 5, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 1 Month Notice on January 8, 2022. Pursuant to section 47(4) of the Act, the Tenant had 10 days, being January 18, 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 January 9, 2022. Accordingly, the Application was filed within the 10-day dispute period.

Section 47(3) of the Act states a notice served pursuant to section 47(1) of the Act must comply with the form and content provisions of section 52 of the Act. 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]

KL admitted the details for cause for ending the tenancy were not stated in the appropriate section of the 1 Month Notice 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. As such, I find the 1 Month Notice is not valid to end the tenancy under section 47(1)(b) 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.

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.

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 31, 2022

Residential Tenancy Branch