



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC LRE OLC**

Introduction

This hearing was reconvened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- cancellation of a One Month Notice to End Tenancy for Cause dated April 4, 2022 ("1 Month 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, *Residential Tenancy Regulations* ("Regulations") pursuant to section 70.

The original hearing of the Application was held on June 16, 2022 ("Original Hearing"). The Tenant did not submit a copy of the 1 Month Notice. The Landlord's advocate attempted to upload a copy of the 1 Month Notice during the Original Hearing but was unsuccessful. In order to permit the Landlord to upload a copy of the 1 Month Notice, pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing and issued a decision dated June 20, 2022 ("Interim Decision"). The Interim Decision stated that, other than for the Landlord uploaded a copy of the 1 Month Notice, the parties were not permitted to serve, or submit to the Residential Tenancy Branch ("RTB"), any further evidence. The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing ("Adjourned NDRP"), scheduled for July 18, 2022 at 11:00 am ("Adjourned Hearing"), were served on the parties by the RTB.

The Landlord, the Landlord's advocate ("DC") and one of the two Tenants ("KW") named in the Application attended the Original Hearing and the Adjourned Hearing and they were given a full opportunity to be heard, to present sworn testimony, to make

submissions and to call witnesses. The other named Tenant in the Application ("SK") did not attend the Original Hearing or the Adjourned Hearing.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding by Tenant

At the Original Hearing, the Tenant stated she served the Notice of Dispute Resolution Proceeding ("NDRP") by email but could not recall the date of the email. The Landlord admitted she received the NDRP by email but stated she did not give the Tenant written consent to the Tenant serving documents on her by email.

Subsection 89 of the Act states:

- 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
 - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
 - (f) by any other means of service provided for in the regulations.

Subsection 43(2) of the Regulations state:

- 43(2) For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

The Tenant did not serve the Landlord with the NDRP using any one of the methods set out in section 89(1) of the Act. The Tenant did not obtain the consent of the Landlord to service of documents described in section 89(1) of the Act by email pursuant to section

43(2) of the Regulations. Notwithstanding this, the Landlord stated she wished to proceed with the Original Hearing. As such, I find the Landlord was sufficiently served with the NDRP pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Service of Evidence by Landlord

Rule 3.10 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

3.19 Submitting evidence after the hearing starts

No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. In providing direction, the arbitrator will:

- a) specify the date by which the evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC Office and whether it must be served on the other party; and
- b) provide an opportunity for the other party to respond to the additional evidence, if required. In considering whether to admit documentary or digital evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting such evidence.

As the Tenant did not serve the 1 NDRP on the Landlord, the Landlord was not given the opportunity to submit her evidence before the Original Hearing. As such, I ordered that the Landlord may upload a copy of the 1 Month Notice at least 7 days before the Adjourned Hearing.

Preliminary Matter – Removal of Applicant from Application

During the Adjourned Hearing, I noted that the tenancy agreement only named the Landlord and KW as parties to it. I also noted the 1 Month Notice only named KW as a tenant. KW stated SK rents a room from her. DC stated the Landlord has not amended the tenancy agreement to add KW as a tenant. Part H. of *Residential Tenancy Policy Guideline 13* states:

H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant. Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant. • See Policy Guideline 19: Assignment and Sublet for more information about occupants and roommates

As SK is only an occupant, he has no rights or obligations under the tenancy agreement. KW requested that I amend the Application to remove SK as an applicant in the Application.

Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlord consented to the amendment requested by the Tenant. As such, pursuant to Rules 4.2, I amended the Application to remove SK as an applicant from the Application. Hereinafter, KW is referred to as the Tenant.

Preliminary Matter – Severance and Dismissal of Tenant's Claims

In addition to seeking cancellation of the 1 Month Notice, the Application makes two claims (the "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 RoP 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 1 Month Notice. However, if I do not cancel the 1 Month Notice and grant the Landlord an Order of Possession, I will dismiss the Other Claims without leave to reapply.

Preliminary Matter – 1 Month Notice Non-Compliant with Section 52 of Act

At the Adjourned Hearing, the Landlord stated she served the 1 Month Notice on the Tenant's door on February 27, 2022. I noted the Form RTB-33 used by the Landlord was obsolete as it was not made on the current Form RTB-33 prescribed by the Director of the Residential Tenancy Branch. The current Form RTB-33 provides additional information regarding the Tenant's rights that did not appear on the form of RTB-33 that the Landlord used for service on the Tenant. I also noted that the 1 Month Notice Submitted by the Landlord to the RTB was not signed by the Landlord.

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 added in italics]

As the Landlord did not serve the Tenant with an approved Form RTB-33 as required by section 52(e) of the Act, the 1 Month Notice is not effective. As such, the Application is successful and I order the 1 Month Notice cancelled. The tenancy continues until ended in accordance with the Act.

As the tenancy continues, I dismiss the Other Claims and grant the Tenant with leave to reapply to make the Other Claims.

Conclusion

The 1 Month Notice is cancelled. 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 18, 2022

Residential Tenancy Branch