



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 Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, the Tenants and their Legal Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the One Month Notice by email on April 26, 2022. Pursuant to Section 88 of the Act, the One Month Notice that is required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) *by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) *by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) *by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) *by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) *as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) *by any other means of service provided for in the regulations.*

As the Landlord did not serve the Tenants in one of the above ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 (CanLII) at para. 65.

The Tenants testified that permission to serve legal documents by email has not been given to the Landlord. I find that service was not effected and it would be administratively unfair to proceed on the Landlord's notice against the Tenants. I cancel the Landlord's One Month Notice because of improper service.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on June 6, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post

registered mail tracking numbers as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package on June 8, 2022. I find the Landlord was sufficiently served with the NoDRP package on June 8, 2022 in accordance with Section 71(2)(b) of the Act.

The Tenants also served their evidence on September 7, 2022 by Canada Post registered mail. The Tenant referred me to the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the Tenants' evidence five days after mailing them, on September 12, 2022, in accordance with Sections 88(d) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on November 1, 2020. The fixed term ended on October 31, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,700.00 payable on the first day of each month. A security deposit of \$850.00 was collected at the start of the tenancy and is still held by the Landlord.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The Landlord stated the One Month Notice was served on the Tenants via email on April 26, 2022. The Tenants confirmed receipt of the One Month Notice, but also stated that they have no agreement with the Landlord to serve legal documents via email. I find that neither party uploaded documentation specifying that legal documents could be served by email on the Tenants. Section 43(1) of the *Residential Tenancy Regulation* allows service via email if an email address was provided for this purpose. RTB Policy Guideline #12 states:

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. ... A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party.

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method. ... Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.

I previously found that service of the One Month Notice was not effected in accordance with the legislation and I cancelled the notice. I find the tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenants' application is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 29, 2022

Residential Tenancy Branch