



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC AAT FFT OPC

Introduction

The landlord seeks an order of possession based on an undisputed *One Month Notice to End Tenancy for Cause* pursuant to section 55(2)(b) of the *Residential Tenancy Act* (“Act”). By way of cross-application the tenant seeks an order of compliance (section 62(3) of the Act), an order to restrict landlord access (section 70 of the Act), and an order to recover the cost of the application filing fee (section 72).

Attending the dispute resolution hearing were the tenants and an agent for the landlord. The parties were affirmed, and Rule 6.11 of the Residential Tenancy Branch’s *Rules of Procedure* was explained to the parties.

Preliminary Issue: Tenant’s Application and Notice of Dispute Resolution Proceeding

The tenant made their application for dispute resolution on July 22, 2022 and the Residential Tenancy Branch emailed a Notice of Dispute Resolution Proceeding to the tenant on August 9, 2022. The tenant’s spouse and the tenant both testified that they were under the understanding that the Residential Tenancy Branch would be sending the notice to the landlord.

It was explained to the tenant and their spouse that it is an applicant’s responsibility to serve a copy of the Notice of Dispute Resolution Proceeding upon the opposing side. (See section 59(3) of the Act, and, as explained on page 2—on the very top line—of the Notice of Dispute Resolution Proceeding).

Given that the applicant tenant failed to provide a copy of the Notice of Dispute Resolution Proceeding on the landlord, including the failure to serve their evidence in a manner consistent with section 88 of the Act, it is my finding and order that the tenant’s application be dismissed with leave to reapply. (The tenant’s claim for recovery of the application filing fee, however, is dismissed without leave to reapply.)

Issue

Is the landlord entitled to an order of possession based on an undisputed notice to end tenancy?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The landlord's agent testified under oath that the tenant was served with a *One Month Notice to End Tenancy for Cause* (the "Notice") by Canada Post registered mail on July 10, 2022 and which was received by the tenant on July 13, 2022. The tenant did not dispute that they received the notice to end tenancy.

The landlord's notice to end tenancy was given under section 47(1)(i) of the Act. The reason is checked off on page two of the Notice and a description of the ground is provided at the bottom of the Notice. A copy of the Notice was submitted into evidence.

The agent testified that, to the best their knowledge, the tenant never made an application for dispute resolution contesting the Notice. It should be noted that the tenant's application did not include a claim for relief in which they sought to dispute the Notice. Nor, it is noted, is there any record of the tenant having filed an application for dispute resolution seeking to cancel the Notice.

The tenant and their spouse were adamant that they sought to dispute the Notice. However, their application for dispute resolution indicates otherwise.

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.

A landlord may end a tenancy by giving a notice to end a tenancy under section 47(1)(i) of the Act if "the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];".

A notice given under this section must comply with section 52 of the Act in form and content. Having reviewed the Notice I find that it complies with section 52 of the Act.

A tenant who receives a notice to end a tenancy under section 47 of the Act has 15 days to file an application for dispute resolution if they seek to dispute the notice. In this case, while the tenant *believed* they had filed such an application, they had not.

Section 55(2)(b) of the Act states that a landlord may request an order of possession of a rental unit if “a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.”

In this dispute, the landlord served the Notice on the tenant, the tenant did not dispute the Notice, and the time for disputing it has long since expired. Accordingly, it is my finding and order that the landlord be granted an order of possession of the rental unit.

A copy of the order of possession is issued with this decision, to the landlord. The landlord must serve a copy of the order of possession on the tenant within two (2) days of receiving this decision.

Conclusion

IT IS HEREBY ORDERED THAT:

- 1. the tenant’s application be dismissed.**
- 2. the landlord’s application be granted. The landlord is granted an order of possession of the rental unit.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 1, 2022

Residential Tenancy Branch