



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on May 4, 2022 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Additionally, they seek the Landlord’s compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 8, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The Tenant stated that they delivered notice of the dispute via registered mail. This included the initial evidence they prepared. The Landlord confirmed they received the initial evidence; however, they did not receive more recent evidence. The Tenant confirmed they received evidence from the Landlord via registered mail.

Preliminary Matter – One-Month Notice and unrelated issues

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on One-Month Notice issued by the Landlord.

I thus dismiss the Tenant's plea for the Landlord's compliance with the *Act* and/or tenancy agreement, with leave to re-apply.

The landlord's claim for recovery of rent amounts owing by offsetting the security deposit amount is dismissed with leave to re-apply.

Issue(s) to be Decided

Is the Tenant granted a cancellation of the One-Month Notice?

If unsuccessful, is the Landlord entitled to an order of possession, as per s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement in place between the parties since they signed it on July 1, 2019. The rent amount began at \$700 and did not increase over the course of this tenancy. In regard to the addendum, the Landlord pointed out that the Tenant had one person staying with them for over 2 weeks. The "noise bylaw" listed in the addendum refers to the local noise bylaw.

The Landlord and the Tenant both provided a copy of the One-Month Notice in their evidence. The Landlord included a "Proof of Service" document to show they served the document to the Tenant on April 29, 2022, to the Tenant who would not answer the door. The Landlord left a copy of the document in the mail slot at the Tenant's rental unit.

The Landlord signed the One-Month Notice on April 27, 2022, for the move-out date of May 31, 2022. On page 2 of the document the Landlord checked two reasons for the One-Month Notice:

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

The Landlord provided no details for these checked reasons, neither on page 2 of the document, nor on a separate page.

In the hearing, the Landlord – via a property manager who stated they never met the Tenant in the past -- set out they received multiple letters from other building residents over a long period of time. The Landlord who attended the hearing and did not present evidence spoke to the Tenant in the past but received a “barrage of verbal abuse” from the Tenant re: complaints and issues raised by other building residents regarding the Tenant. The property manager, on the Landlord’s behalf, explained that the Landlord approached the Tenant 2 or 3 times in the past about issues; however, they could not approach the Tenant about things.

The property manager in the hearing acknowledged that the situation has escalated over time; however, they pledged to resolve the issue and stated they would like to offer assistance to the Tenant.

The Tenant set out how their own day-to-day schedule conflicted with that of other residents. In their first-hand description of the history with the Landlord on these issues, they described the Landlord instructing them to notify other residents about noise and other disturbances by banging on the wall or ceiling of the neighbouring units. This continued to escalate, and when they brought concerns repeatedly to the Landlord, the Landlord instructed them to move. According to the Tenant, all building residents are told by the Landlord to engage in banging on walls or ceilings to stifle noise from others, and this means the Landlord does not deal with the issues sufficiently.

Analysis

The *Act* s. 47 of the *Act* states, 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:

(d) the tenant . . . has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant . . .

. . .

(3)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Following this, s. 52 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). . . state the grounds for ending the tenancy,

. . .and

(e)when given by a landlord, be in the approved form.

In this hearing, both parties submitted a copy of the One-Month Notice. This was a version of the form from 2016, with space for the issuing Landlord to provide details. There were no details in that space, and no separate page on which the Landlord provided details of either cause indicated.

The updated form, available online to the Landlord, asks for

dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).

While the Landlord cannot strictly speaking be faulted for using an outdated form, the detail omitted from the form when issued to the Tenant is not in line with full disclosure to the Tenant. I find it was only upon disclosure of materials for this hearing did the Tenant learn the nature of the issue and the extent of the problem from the Landlord's perspective.

The Landlord provided a number of statements from other residents; however, I reduce the weight of this evidence without any supplemental information from the Landlord who dealt with the issue directly, even though they were present in the hearing. This Landlord did not speak to the issue at hand; therefore, a firsthand account was missing from the Landlord's evidence. The property manager who did the speaking – though well-versed in matters of tenancy and fulsome in their explanation of documentary evidence – was a second-hand account to explain the situation more objectively. What was needed in this instance, given the lack of detail present on the form, was a firsthand account of the allegedly brusque or inappropriate manner in which the Tenant chose to respond to what the Landlord brought to them.

Given that the Landlord who was dealing with the Tenant did not speak to the issue, I question their aims in compiling evidence in this manner, and there was no account that individual complaints were brought to the Tenant's attention in a timely manner. There is no evidence to show that they were. Understandably, it's plausible this is what led to anxious and/or tense responses from the Tenant.

In this matter, the onus is on the Landlord provided they have cause to end the tenancy. The Landlord spoke to events involving other residents; however, the Landlord who first-hand was dealing with the situation did not provide direct testimony in the hearing even though they attended. The letters that are dated in the Landlord's evidence (with multiple copies of each) are all from approximately one year prior; there is thus no explanation of what recent events served as the catalyst to end the tenancy, and that detail is not set out on the One-Month Notice.

The *Act* requires that notices to end tenancy issued by the landlord be in the approved form. This includes all required information a tenant would need to dispute the One Month Notice if necessary.

I find the Landlord did not provide full details and sufficient information on the One Month Notice. Without details of the cause, I find the document does not comply with s. 52 in the approved form. I cancel this One Month Notice in which relevant and important details are not provided.

As the Tenant was successful in this Application, I find the Tenant is entitled to recover the \$100 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reasons outlined above, I so order the One-Month Notice that the Landlord served on April 29, 2022 is cancelled.

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

Dated: September 30, 2022

Residential Tenancy Branch