



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 tenant's application, filed on May 25, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated May 25, 2022 ("1 Month Notice"), pursuant to section 47.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord and her agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. and ended at 9:47 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's agent, and I were the only people who called into this teleconference.

The landlord and her agent confirmed their names and spelling. The landlord provided her email address for me to send this decision to her after the hearing.

The landlord stated that a company ("owner") owns the rental unit, and she is employed by the company as an administrator. She said that she had permission to represent the owner at this hearing. She provided the rental unit address. She identified herself as the primary speaker for the landlord at this hearing.

The landlord's agent confirmed that he is employed by the owner as an administrative assistant, and he had permission to represent it at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* does not permit recording of this hearing by any participant. At the outset of this hearing, the landlord and her agent both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord and her agent. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests. They confirmed that they were ready to proceed with this hearing.

The landlord confirmed receipt of the tenant’s application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant’s application.

The landlord stated that she personally served a copy of the landlord’s first evidence package to the tenant on June 24, 2022. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord’s first evidence package on June 24, 2022.

The landlord stated that she thinks she personally served a copy of the landlord’s second evidence package, consisting of one page of a proof of service, to the tenant, on August 5, 2022, but she is not sure of the exact date. I informed the landlord that I could not consider the landlord’s second evidence package at the hearing or in my decision because the landlord could not provide an exact service date and the tenant did not attend this hearing to confirm receipt.

Preliminary Issue – Dismissal of Tenant’s Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

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 that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant’s application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 1 Month Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Both parties provided a copy of the landlord's 1 Month Notice using an old RTB form, dated December 2003. The date of the notice is May 24, 2022, and the effective move-out date is June 30, 2022. The landlord confirmed the above information during this hearing.

Sections 47 and 52 of the *Act*, state in part (my emphasis added):

47 *(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...*

...

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

52 **In order to be effective, a notice to end a tenancy must be in writing and must**
 (e) when given by a landlord, be in the approved form.

The landlord did not issue a 1 Month Notice to the tenant in the approved RTB form, as required by sections 47 and 52 of the *Act*. The landlord used a form, dated December 2003, that is no longer available or approved by the RTB. The form is almost 19 years old. I informed the landlord of the above information during this hearing, and she confirmed her understanding of same.

The current approved RTB form is dated November 30, 2021 and is entitled "One Month Notice to End Tenancy for Cause." It requires each separate reason to be checked off for each ground for cause. It requires the details of cause to be described on page 2 of the notice, as follows (my emphasis added):

*Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. **This information is required. An arbitrator may cancel the notice if details are not provided.***

The landlord did not include the above required details of cause in the 1 Month Notice. The landlord stated: "Non-compliance to the agreement signed by the landlord and resident dated January 27, 2022" on page 2 in the section entitled "reason for the notice." The landlord did not state what agreement she was referring to, what the agreement stated, what was not complied with, where the non-compliance occurred, the dates or times of any incidents, and the names of any people involved in any incidents, as required by the current approved RTB form.

The old RTB form from 2003 also includes a ten day notice for unpaid rent, pursuant to section 46 of the *Act*, and a two month notice for landlord's use of property, pursuant to section 49 of the *Act*, on the same form. The current approved RTB forms have separate notices for separate reasons and sections of the *Act*; therefore, the 10 Day Notice and the 2 Month Notice, are separate forms with separate reasons. The landlord checked off two sections, which include four reasons, on the old RTB form; the current approved RTB form has four separate reasons on the 1 Month Notice.

I informed the landlord of all of the above information during this hearing, and she confirmed her understanding of same.

On a balance of probabilities and for the above stated reasons, the landlord's 1 Month Notice, dated May 24, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. I informed the landlord of my above decision verbally during this hearing. She confirmed her understanding of same.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord's 1 Month Notice, dated May 24, 2022, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is 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: September 27, 2022

Residential Tenancy Branch