



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding W.S. BERNARD INVESTMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented at the hearing by resident manager, TC. As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceedings package and the tenant confirmed receipt of the landlord's evidence. Both parties indicated they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

The tenant's application for dispute resolution used the resident manager's name as landlord however the parties agree that the rental unit is owned by company and that both the tenancy agreement and the notice to end tenancy are signed in the name of the company. The parties agreed that the tenant's application should be amended to

reflect the company as landlord. The proper legal name for the landlord is reflected on the cover page of this decision.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on January 1, 2017. Rent is currently set at \$1,192.00 per month payable on the first day of each month.

The rental unit is a ground floor unit located in a 3 storey walk up building. The landlord testified that his wife served the tenant with a 1 Month Notice to End Tenancy for Cause by posting a copy of it to the tenant's door on June 24, 2022. The landlord acknowledges signing the form, however he testified that his wife (not present at this hearing) "ticked" the boxes on the second page.

On the second page, the Notice provides 2 reason for ending the tenancy:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Under "details of cause", the landlord is required to describe what, where and who caused the issue and indicate dates/times, names etc. The form also states, "*This information is required. An arbitrator may cancel the notice if details are not provided*". The landlord testified that his wife and he didn't provide any details of the cause in writing. The landlord also testified that to the best of his knowledge, no other documents were given to the tenant when his wife posted the notice to his door.

The landlord testified that the reason he seeks to end the tenancy is because the tenant has been harassing other tenants in the building. On June 21st, at approximately noon, the tenant went to the residence of the upstairs occupants wearing only his underwear, loudly banging on their door. The occupants were asleep at the time but the landlord testified that they were accused of making noise which disturbed the tenant below who went to complain. The occupants provided a written statement of the interaction with the tenant. The landlord testified that they have since moved out of the building due to

the tenant's behaviour. The occupants of the unit across from them have also moved out, citing the tenant's behaviour as well.

The landlord testified that the tenant also had an altercation with another occupant of the building in the parking lot, date not known. The tenant put his truck in reverse, spinning out his wheels and he almost hit another tenant of the building in doing so.

The landlord testified that his wife is afraid of the tenant. She is afraid to serve the tenant with further notices to end tenancy or other documents. Other tenants in the building are moving out because of the tenant, including a daughter and her parents who lived in different units in the building. None of them will put their complaints in writing because they are all afraid of the tenant.

The tenant gave the following testimony. The accusations presented by the landlord are all lies. The landlords have been trying to evict him because of a fallout between himself and a tenant he used to date. Since then, the landlord has been trying to discredit him with lies. He tried to resolve the issue with the occupants upstairs calmly and it exploded in his face. He's asked the landlord to resolve the issue with loud tenants upstairs dropping things between 9:00 and 1:00 in the afternoon, but it wasn't resolved.

Analysis

The tenant acknowledges receiving the landlord's 1 Month Notice to End Tenancy for Cause on June 24th and filed his application to dispute it within 10 days, on June 30th in accordance with section 47 of the Act.

When a tenant disputes a landlord's notice to end tenancy, the onus to prove the reasons for ending the tenancy falls upon the landlord pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure. In order for a landlord to prove the reasons for ending the tenancy, the landlord **must first** supply the tenant with a description of the events that leads them to seek an end to the tenancy. This formal requirement is made clear in the instructions to the landlord, written directly on the form under "*details of cause*":

Describe what, where and who caused the issue and indicate dates/times, names etc.
This information is required. An arbitrator may cancel the notice if details are not provided.

(emphasis added)

Section 52(d) of the Act states that in order to be effective, a notice to end tenancy must be in writing and must, except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy.

The landlord failed to state the grounds for ending the tenancy under the “*details of cause*”. This flaw is fatal to the landlord’s notice to end tenancy. Without being provided with this information, the tenant cannot weigh the complaints made against him to determine whether he will dispute the eviction notice or accept its relevance and move out. The tenant is also denied the opportunity to decide whether he believes the landlord’s reasons to end the tenancy are valid, putting him at a disadvantage in filing a dispute to the notice to end tenancy and rebutting it.

Further, the tenant’s ability to gather evidence to dispute the allegations are hampered since he is required to wait until the landlord exchanges evidence with him to finally learn about the nature of the complaint against him. I find this to be procedurally unfair.

Based on the above, I find the landlord served an ineffective notice to end tenancy for cause; one that does not comply with the form and content provisions of section 52 of the Act. Consequently, I cancel the notice and order that the tenancy continue until it is ended in accordance with the Act.

As the tenant’s application was successful, I grant the tenant a monetary order of \$100.00 for the filing fee pursuant to sections 67 and 72 of the Act. The tenant is authorized to deduct \$100.00 from a single rent payment due to the landlord.

Conclusion

The notice to end tenancy is cancelled. This tenancy shall continue 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: November 17, 2022

Residential Tenancy Branch