



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, CNC-MT, PSF, OLC

Introduction

This hearing was scheduled to deal with a tenant's application for cancellation of a One Month Notice to End Tenancy for Cause ("1 Month Notice") and an extension of time to make the application. The tenant also requested orders for compliance and for the landlord to provide services or facilities. After initially filing, the tenant updated his Application for Dispute Resolution to include a request for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice")

Both the landlord and the tenant appeared for the hearing. The tenant also appeared with his nephew who was translating for the tenant. The landlord also appeared with his daughter who was acting as the landlord's agent. The parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, I explored service of hearing materials.

The tenant testified that he served the proceeding package to the landlord, in person, in late June 2022. The landlord confirmed that to be accurate.

In filing his Application for Dispute Resolution, the tenant only provided a copy of the first page of a 1 Month Notice dated May 12, 2022. The tenant did not provide a copy of a 10 Day Notice or any other evidence.

In the days leading up to the hearing, the landlord had uploaded a significant amount of evidence to the Residential Tenancy Branch, including all three pages of a One Month

Notice dated May 12, 2022; however, the landlord did not serve this evidence package to the tenant.

I compared the first page of the 1 Month Notice provided by the tenant with that provided by the landlord and I was satisfied they were the same. I informed the parties that I would limit the scope of this hearing to dealing with and reviewing the 1 Month Notice since this is the only document provided to me by both parties and I was satisfied the tenant had received this document. The remainder of the landlord's documentary evidence was excluded from further consideration.

The tenant had requested an extension of time to make this Application for Dispute Resolution to dispute the 1 Month Notice. A tenant in receipt of a 1 Month Notice has 10 days to make an Application for Dispute Resolution to dispute it and the consequences for not making an application within those 10 days, are provided under section 47(4) and (5) of the Act. Below, I have reproduced those relevant paragraphs:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[My emphasis underlined]

In making this Application for Dispute Resolution the tenant provided a copy of the first page of a 1 Month Notice dated May 12, 2022 with a stated effective date of June 15, 2022. The landlord provided a copy of all three pages of the 1 Month Notice and provided affirmed testimony that he had served all three pages of the 1 Month Notice to the tenant on May 12, 2022. During the hearing, I asked the tenant to turn to page two of the 1 Month Notice. The tenant's nephew appeared to be assisting the tenant with this and reported back that he was able to find the third page but not the second page. Having heard the tenant had pages one and three before him but only provided the Residential Tenancy Branch with page one, I accepted the landlord's affirmed testimony that he had served the tenant with all three pages. Upon review of 1 Month Notice, I

note that it is in the approved form and the full copy that was provided to me by the landlord is duly completed.

In submitting this Application for Dispute Resolution, the tenant indicated he received the subject 1 Month Notice on May 12, 2022 and during this hearing the landlord provided affirmed testimony that he served the 1 Month Notice to the tenant in person on May 12, 2022. Therefore, I accept that the tenant was in receipt of the 1 Month Notice on May 12, 2022. As such, I find the tenant had until May 24, 2022 to dispute the 1 Month Notice after taking account the 10th day fell on a Sunday and the statutory holiday of May 23, 2022.

The tenant filed to dispute the 1 Month Notice when he submitted his Application for Dispute Resolution to the Residential Tenancy Branch on June 15, 2022 which is well past the time limit for disputing the 1 Month Notice.

In filing this Application for Dispute Resolution, the tenant requested an extension of time to make the Application for Dispute Resolution. I may extend a filing deadline, in exceptional circumstances only, under section 66 of the Act. Accordingly, I proceed to consider whether to grant an extension to the tenant.

The tenant submitted in his request for an extension, as provided on his Application for Dispute Resolution, that the Application for Dispute Resolution was being filed late because:

“We did’n know about and [name of tenant] he can not read English very well and I was away and last night when came back I read it and we come to day to disputed.”

[Reproduced as written]

In hearing from the tenant during the hearing I accept that he is not proficient in English and may require translation. However, I do not find this to be an exceptional circumstance. Many people reside in this province and are not proficient in reading or speaking English; however, it is upon that person to take reasonable action to have the document translated.

From the tenant’s submission, it appears as though there was one particular person who translated the 1 Month Notice for the landlord but this person was not identified and there was no direct or corroborating evidence provided to demonstrate this person was

unavailable from May 12, 2022 and May 24, 2022. Nor, is there any evidence to demonstrate the tenant could not avail himself of someone else to translate for him. Accordingly, I am unsatisfied that an “exceptional circumstance” prevented the tenant from filing to dispute the 1 Month Notice within the time limit for doing so and I do not grant the tenant an extension.

In light of the above, I find the 1 Month Notice to be undisputed and the tenant conclusively presumed to have accepted the end of tenancy and was required to vacate the rental unit by the effective date pursuant to section 47(5) of the Act. Therefore, I dismiss the tenant’s request for cancellation of the 1 Month Notice.

On another procedural note, the application was amended to remove the name of an occupant who is not a tenant on the tenancy agreement.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? If yes, when shall the Order of Possession take effect?

Background and Evidence

I was provided consistent submissions that the 1 Month Notice before me was served to the tenant on May 12, 2022 and has a stated effective date of June 15, 2022.

During the hearing, I asked the parties whether the tenant is current in his rent payments or owes rent. The tenant testified that the landlord collected November 2022 rent last night. The landlord testified that the money he received last night was actually for the month of October 2022. I make no finding as to whether the payment received by the landlord last night was for October 2022 or November 2022 and I leave that dispute to be decided at a later date if one of the parties makes a monetary claim against the other.

I turned to the parties with a view to facilitating a mutual agreement with respect to the date the tenant shall vacate the rental unit and to provide the parties input as to when an Order of Possession should take effect. The parties did not reach a mutual agreement and I informed the parties that I would make the decision as to the effective date for an Order of Possession.

The landlord initially requested the tenant vacate in 10 days and then increased the time to November 30, 2022. The tenant initially requested that he be permitted to occupy the rental unit for three more months since he has disabilities. The tenant subsequently reduced his request to December 31, 2022.

Analysis

Section 55(1) of the Act provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have dismissed the tenant's application to cancel the 1 Month Notice as explained in the Preliminary and Procedural Matters section of this decision. Upon review of the 1 Month Notice, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

However, having heard the rent is payable on the first day of the month, the effective date of the 1 Month Notice should have read June 30, 2022 to afford the tenant one full month of notice. An incorrect effective date does not invalidate a notice to end tenancy. Rather, the effective date automatically changes to comply, pursuant to section 53 of the Act. Accordingly, I find the tenancy came to an end on June 30, 2022 and the issue becomes, when should the Order of Possession take effect?

The tenant claims to have paid rent for November 2022; however, the landlord takes the position the tenant made payment towards the October 2022 rent. While I make no finding as to whether payment was for October 2022 or November 2022, the landlord was willing to permit the tenant occupancy until November 30, 2022 which I find is the most reasonable request before me. The tenant had requested two to three months to vacate the rental unit, however, considering the tenant was given the subject 1 Month Notice on May 12, 2022, I am of the view the tenant has already benefited from several

months of delay while awaiting for this hearing. Therefore, I provide the landlord with an Order of Possession effective at 1:00 p.m. on November 30, 2022.

Conclusion

The tenant's application is dismissed.

The landlord is provided an order of Possession effective at 1:00 p.m. on November 30, 2022 under section 55(1) of 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 03, 2022

Residential Tenancy Branch