



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on September 9, 2022 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”), an order for repairs in the rental unit, 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 January 26, 2023. In the conference call hearing I explained the process and offered the attending parties the opportunity to ask questions.

Preliminary Issue – Notice of Dispute Resolution Proceeding and Tenant’s evidence

The *Act* s. 89(1) sets out the means of service for an application for dispute resolution, when one party makes the Application at the Residential Tenancy Branch and must inform the other party. This is either leaving a copy with the person/landlord’s agent, or by registered mail.

Further, the *Residential Tenancy Branch Rules of Procedure* sets out the rules for parties on submission and provision of evidence to the Branch and each other. This sets timelines for doing so.

The Residential Tenancy Branch provided the Notice of Dispute Resolution Proceeding document to the Tenant on September 22, 2022. This was with explicit instructions to serve the Landlord “no later than September 25, 2022.”

The Tenant provided a copy of the receipt from the post office they visited on September 25, 2022 to send the document and their evidence via registered mail. The Landlord lives in the upper portion of the rental unit property, and that is the address the Tenant used for service of this information.

The mail was returned to the Tenant; in the hearing the Tenant stated this was either “rejected or refused.” The Tenant received the returned mail, and attached it to the Landlord’s door in early January, as shown in the picture of this they provided.

The Landlord stated they did not receive these documents from the Tenant, and requested the information from the Residential Tenancy Branch on October 14, 2022 when the branch sent the documentation to the Landlord.

I find the Tenant completed service as required by s. 89(1) of the *Act*. The receipt shows they sent this to the Landlord’s address within the 3 days as specified in s. 59(3) of the *Act*. The registered mail was not retrieved, so the Tenant undertook the alternate measure of attaching the envelope to the Landlord’s door.

I find the Landlord was deemed served on September 30, 2022, within five days of the Tenant sending the Notice of Dispute Resolution Proceeding and their evidence by registered mail on September 25, as per s. 90(a) of the *Act*. I find the Tenant completed service as required; the Tenant’s evidence thus receives full consideration herein.

Preliminary Issue – Landlord’s service of evidence

With respect to a respondent’s evidence, the *Residential Tenancy Branch Rules of Procedure* Rule 3.15 specifies that evidence a respondent intends to rely on at the hearing must be served to the other party, and submitted to the Residential Tenancy Branch, as soon as possible, and “not less than seven days before the hearing.”

The Landlord stated they provided their evidence to the Tenant. In more detail, they stated they were out of province since late December, and they relied on another rental property resident to print out information and provide that to the Tenant. This was 3 days prior to the hearing in the morning.

In the hearing, the Tenant confirmed they received information from the Landlord; however, this was 2 days’ prior to the hearing in the evening. The Tenant noted they sent information to the Landlord in September (at the start of this process) to facilitate communication or service by email.

I find the Landlord did not complete service of their evidence in a timely manner, or in a way recognized in s. 89 of the *Act*. The Tenant did not have the opportunity to review evidence, as necessary, in this administrative tribunal setting. That is an important principle of procedural fairness.

For these reasons, as per Rule 3.17, I do not accept the evidence from the Landlord, and it receives no consideration in this hearing. Any consideration thereof would unreasonably prejudice the Tenant and result in a breach of the principles of natural justice.

Preliminary Issue – irrelevant 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.”

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 the One-Month Notice issued by the Landlord.

I dismiss the Tenant’s request for repairs in the rental unit, with leave to re-apply.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One-Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

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

Background and Evidence

I have reviewed the evidence before me in this hearing; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The Tenant provided an image of one page of the One-Month Notice as evidence for this hearing. Page 1 of 3 of that document shows the Tenant name, the Landlord’s name and

signature, the effective date (October 3, 2022). This is one page of the RTB-#33 form created for this purpose.

Both parties in the hearing explained the conflict from their perspectives. This concerned the pet owned by the Tenant. The Landlord described all dialogue and warnings they gave to the Tenant about the pet's boundaries and interference with other residents and visitors to the rental unit property.

Analysis

In all matters concerning an end of tenancy, the Landlord bears the burden of proof to show that a notice to end tenancy is valid, complete, and served in the appropriate manner.

The *Act* s. 55 states, in part:

- 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.

The *Act* 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, the Tenant provided a single image of page 1 of the One-Month Notice. The document does not include provide for the grounds that the Landlord wishes to end the tenancy. Additionally, I cannot determine on the Landlord's behalf that they indeed served a 3-page document, in the approved form to the Tenant. I find both these elements are strictly required, to be precise on the ending of the tenancy, and are both specifically set out in s. 52.

Because the document does not meet the requirements of s. 52, the Landlord did not meet the burden of proof to show they complied with condition of s. 55(a).

For these reasons, I order the One-Month Notice is cancelled. I find the One-Month Notice, issued by the Landlord on September 1, 2022, does not comply with the requirements set out in s. 52(d) and (e).

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 \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice is cancelled and the tenancy remains in full force and effect. 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: January 27, 2023

Residential Tenancy Branch