



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's application, filed on August 7, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated July 30, 2022 ("1 Month Notice"), pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

The landlord did not attend this hearing, which lasted approximately 12 minutes. The tenant attended the hearing and was 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 9:42 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 tenant and I were the only people who called into this teleconference.

The tenant provided her name and spelling. She provided her email address for me to send a copy of this decision to her after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the tenant affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the tenant. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests.

The tenant stated that the landlord was personally served with the tenant's application for dispute resolution hearing package on August 23, 2022. She said that she witnessed her uncle serving the landlord in person, and she took a video of the service. She claimed that she looked at the video on her cellular phone to obtain the date of service. In accordance with section 89 of the *Act*, I find that the landlord was personally served with the tenant's application on August 23, 2022.

The tenant confirmed that the landlord personally served the tenant's babysitter, not the tenant, with a copy of the landlord's 1 Month Notice on July 30, 2022. The tenant stated that the effective move-out date on the notice is August 31, 2022. In accordance with section 71(2)(c) of the *Act*, I find that the tenant was sufficiently served with the landlord's 1 Month Notice on July 30, 2022. Even though the tenant did not personally receive the landlord's notice from the landlord, she received it later and provided a copy of same for this hearing to dispute it.

During this hearing, the tenant confirmed that she did not want to pursue her claim for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement because she resolved the issue with the landlord. I informed her that this portion of her application was dismissed without leave to reapply. She confirmed her understanding of same.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within 10 days of receiving the 1 Month Notice. In this case, the tenant claimed that she received the 1 Month Notice on July 30, 2022, and filed her application to dispute it on August 7, 2022. Accordingly, I find that the tenant's application was filed within the 10-day time limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not appear at this hearing. The landlord did not meet the onus of proof.

I also note that the landlord did not sign the 1 Month Notice at the bottom of page 1. Therefore, I find that the landlord's 1 Month Notice does not comply with section 52 of the *Act*.

Accordingly, the tenant's application to cancel the landlord's 1 Month Notice is granted. The landlord's 1 Month Notice, dated July 30, 2022, is cancelled and of no force or effect. The landlord is not entitled to an order of possession, pursuant to section 55 of the *Act*. This tenancy will continue until it is ended in accordance with the *Act*.

I informed the tenant of my decision verbally during this hearing. She confirmed her understanding of same.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is granted.

The landlord's 1 Month Notice, dated July 30, 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*.

The remainder of the tenant's application is dismissed without leave to reapply.

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: January 06, 2023

Residential Tenancy Branch