



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on October 30, 2022 to dispute a One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Landlord. Additionally, the Tenant seeks 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 March 10, 2023.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – hearing conduct

The parties fundamentally disagreed on virtually all of the details surrounding service of documents for this hearing process, and details regarding the tenancy agreement. At the outset of the hearing, I asked the parties for no interruptions, and verified that I would always check with the other party for a response to what they heard from the other. I informed them I was taking notes during the hearing, and there would be frequent pauses throughout while I was writing material down.

Despite this, the parties continually opted to directly question each other and did not make the effort to listen respectfully before being prompted to respond. This continued through the whole hearing. More than one time I asked the parties to stop arguing and explained the way to solve the issues between them was through resolution in this hearing process. Despite my instruction and request for their assistance in managing

the hearing, while paused for my notetaking, direct questions from one party followed to the other, and I reminded the parties to wait patiently.

The hearing ended abruptly, with the parties refusing to accede to my instructions to stop arguing about the matter.

I hold both parties responsible for this behaviour. This was despite the Landlord claiming difficulty with English at the outset that required their family member's assistance in the hearing. This impacted my ability to verify statements made before proceeding to hear the other's response to that testimony. Ultimately, this impacts the parties' legal rights and obligations in this tenancy going forward, to a rather severe degree, as set out below.

Preliminary Matter – Tenant's evidence

In the hearing the Tenant presented that they notified the Landlord of this hearing through serving the Notice of Dispute Resolution Proceeding to the Landlord via email. The Landlord acknowledged this mode of service, and stated they received the Notice of Dispute Resolution Proceeding and the Tenant's evidence via email.

The Tenant stated in the hearing that they provided their evidence for this hearing to the Residential Tenancy Branch. There is no evidence in the Residential Tenancy Branch's record for this hearing.

The *Residential Tenancy Branch Rules of Procedure* govern this hearing process, to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. The following Rules apply to this situation:

- 2.5: specifies that the applicant must submit "copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17" when submitting an Application for Dispute Resolution – this is an applicant's evidence directly to the Residential Tenancy Branch
- 3.14: specifies that evidence not submitted at the time of application "must be received by the respondent and the Residential Tenancy Branch directly. . . not less than 14 days before the hearing"
- 3.17: a party must demonstrate that evidence not provided in accordance with Rule 2.5 or 3.14 may be considered depending on whether a party can show to

the arbitrator that it is new and relevant evidence not available at the time of application

While the Tenant stated they provided material to the Residential Tenancy Branch for this hearing, I find as fact that was not the case. I allow for no provision of additional evidence from the Tenant post-hearing.

Preliminary Matter – Landlord’s evidence to the Tenant and Residential Tenancy Branch

In the hearing, the Landlord described sending their material to the Tenant via registered mail, on March 2, 2022. The Landlord provided a record of their registered mail for this purpose in their evidence to the Residential Tenancy Branch.

With regard to the Rules of Procedure, a respondent must ensure that evidence that they intend to rely on at the hearing is served to the applicant and the Residential Tenancy Branch as soon as possible. This “must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.”

I find the Landlord did not ensure compliance with this important timeline, choosing to send their evidence on March 2, 2023. This did not ensure that the Tenant received that material not less than seven days prior to the hearing. In the hearing, the Tenant confirmed they did not receive registered mail in this fashion.

I find, despite the Landlord knowing about the Tenant’s Application in November, they did not provide evidence – in particular, concerning the One-Month Notice – in a timely manner. By sending material on March 2, they could not guarantee that material was received by the Tenant at least seven days in advance. For this reason, I omit the Landlord’s evidence from consideration in this hearing.

Issues to be Decided

Is the Tenant entitled to a 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?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Tenant indicated on their Application that the Landlord served the One-Month Notice by attaching it to the door of the rental unit on October 21, 2022. The Landlord and Tenant disagreed about who was a responsible adult living in the rental unit to receive important legal documents.

The Landlord in the hearing presented that they provided reasons on the second page of this document, in order to advise of the ending of the tenancy. This concerned damage to the walls of the rental unit, after the Landlord conducted an inspection in the rental unit on October 14, and a follow-up inspection on October 21. In the hearing the Landlord also mentioned an unacceptable number of people visiting to the rental unit frequently during the daytime, and the Tenant's responsibility for yard care.

The Tenant confirmed they received a One-Month Notice on October 22, 2022. This was a three-page document, specifying the end-of-tenancy date as November 30, 2022. The Tenant disputed the extent of damage in the rental unit, and stated plainly that the tenancy agreement in place between the parties does not specify that they must not hang pictures in the rental unit, which is the nature of the alteration to walls from their perspective.

In the hearing, the Landlord also referred to the Tenant's pattern of not paying rent for the months prior to the scheduled hearing date. The Landlord also described the Tenant not paying utilities. This was the reason for the Landlord issuing 3 subsequent "10-Day Notice to End Tenancy for Unpaid Rent/Utilities" documents to the Tenant in January 2023.

The Tenant disputed the utility amounts in question. The Tenant confirmed they did not pay rent since January 2023, with the money normally reserved for rent "sitting in [their] bank account." The Tenant did not specifically challenge the 10-Day Notices through a formal dispute resolution process, thinking that the issue of unpaid rent and their tenancy ending for that reason could be merged into this present hearing.

Analysis

The *Act* s. 47 is the provision that deals with the landlord ending the tenancy for many different conditions. Here, the Landlord ostensibly issued the One-Month Notice for the reason of the Tenant's damage to the rental unit.

In deciding on the end of tenancy, and whether the reasons for ending the tenancy are valid, the onus lies with the Landlord to provide ample proof that the reasons are valid. More basically, regarding the validity of the notice to end tenancy, 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 Landlord did not submit a copy of the One-Month Notice. Because of this, I cannot verify if the document is correct, containing the mandatory information that the *Act* specifies.

The *Act* requires that notices to end tenancy by the Landlord be in the approved form. The Landlord did not provide a copy of the One-Month Notice; therefore, I cannot verify this. The Landlord has not met the burden of proof to show the One-Month Notice is valid; therefore, I cancel that One-Month Notice. It is of no legal effect.

With the One-Month Notice cancelled, the tenancy will continue and there is no order of possession.

The tenancy otherwise ending for reasons of unpaid rent or utilities is not properly the subject of this hearing. The Tenant did not amend their Application specifically to dispute those notices that the Landlord issued in January; nor did the Landlord apply for an order of possession in line with those notices. Above I excluded consideration of the Landlord's evidence by reason of the timeline it was served; therefore, I decline to consider the contents of those January notices, or the reasons why the Landlord issued them.

I urge both parties to check into their legal rights and obligations in this tenancy. The matter of unpaid rent remains unresolved and that is a very serious matter. Because

the parties continued to argue in this hearing, that issue remains unresolved because I was not able to properly manage the hearing which could have included amending an application to hear additional issues immediately affecting the tenancy.

The Tenant was successful in this Application; therefore, I grant them recovery of the \$100 filing fee they paid for this application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reasons above, I order that the One-Month Notice issued on October 21, 2022 (as indicated on the Tenant's Application) 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: March 13, 2023

Residential Tenancy Branch