



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC**

Introduction

This hearing was reconvened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act"). In the Application, the Tenant seeks cancellation of a One Month Notice to End Tenancy for Cause dated November 11, 2022 ("1 Month Notice") pursuant to section 47 of the Act.

The Landlord and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and his evidence (collectively the "NDRP Package") on the Landlord by registered mail on November 22, 2022. The Tenant provided the tracking number for service of the NDRP Package on the Landlord to corroborate his testimony. The Landlord acknowledged receipt of the NDRP Package. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

The Landlord stated he did not serve any evidence on the Tenant for these proceedings.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the Tenant is not entitled to cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

The parties agreed the tenancy commenced in November 2019, for a fixed term of one year, with rent of \$1,050.00 payable on the 1st day of each month. The parties agreed the current rent is \$1,350.00 per month. The Landlord stated the Tenant paid a security deposit of \$525.00 and that he is holding it in trust for the Tenant.

The Landlord submitted into evidence a copy of the 1 Month Notice and stated he served it on the Tenant's door on November 11, 2022. The Tenant acknowledged receipt of the 1 Month Notice. The 1 Month Notice stated the causes for ending the tenancy were:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The form on which the 1 Month Notice was served on the Tenant was obsolete and it did not provide any details on the causes for ending the tenancy.

Analysis

Subsections 47(1)(d)(i), 47(1)(d)(iii), 47(1)(e)(i), 47(1)(e)(ii), sections 47(3) 47(4) and 52 of the Act state:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

[...]

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

[...]

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(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.

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) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) *when given by a landlord, be in the approved form.*

[emphasis added in italics]

The Landlord gave the Tenant a 1 Month Notice that was not on the Form RTB-33 approved for use by the Director of the Residential Tenancy Branch. In particular, the form used by the Landlord did not provide details on the causes for ending the tenancy and it did not contain the required information to landlords and tenant. As such, the 1 Month Notice did not comply with section 52 of the Act. As the 1 Month Notice did not comply with section 52 of the Act, the notice did not comply with the requirements of section 47(3) of the Act. Based on the foregoing, I find the 1 Month Notice was not effective when it was given to the Tenant. As such, the Application is successful and I order the 1 Month Notice to be cancelled. The tenancy continues until it is lawfully ended in accordance with the Act.

Conclusion

The 1 Month Notice is cancelled. The tenancy continues until it is lawfully 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: April 13, 2023

Residential Tenancy Branch