



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) in which the Tenant applied for:

- an order cancelling a One Month Notice to End Tenancy dated December 5, 2022 (“1 Month Notice”) pursuant to section 47 of the Act.

The Landlord and 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* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Non-Service of Notice of Dispute Resolution on the Landlord

The Tenant admitted he did not serve the Notice of Dispute Resolution Proceeding on the Landlord as he thought the dispute was resolved between the parties after he received the 1 Month Notice. Normally I would have considered adjourning the hearing to permit the Tenant to serve the NDRP on the Landlord. However, for the reasons stated below, it was unnecessary for me to adjourn the hearing.

Preliminary Matter – Address of Rental Unit

When I asked, the parties agreed the rental unit was better identified as “Level 1, First Floor”. The Tenant asked that I amend the Application to correct the address of the rental unit. The Landlord consented to the proposed amendment.

Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Pursuant to Rule 4.2 of the RoP, and with the consent of the Landlord, I order the Application be amended to amend the address of the rental unit to include “Level 1, First Floor”.

Issues to be Decided

- Is the Tenant entitled to an order for cancellation of the 1 Month Notice?
- If the Tenant is not entitled to an order for the 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 and my findings are set out below.

Both the Landlord and Tenant submitted signed copies of the tenancy agreement dated April 10, 2016. The parties agreed the tenancy commenced on April 16, 2016, for a fixed term ending three months after its commencement, with rent of \$600.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$300.00 by April 10, 2023. The tenancy agreement states, “no pet, no smoke/weed and no loud music”. The Landlord stated the Tenant paid the security deposit and that she was holding it in trust for the Tenant. Based on the foregoing, I find there is a residential tenancy between the parties and that I have jurisdiction to hear the Application.

The Landlord stated the 1 Month Notice was served on the Tenant in-person on December 5, 2022. The Tenant acknowledged receiving the 1 Month Notice from the Landlord. The 1 Month Notice stated the causes for ending the tenancy were:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The 1 Month Notice did not provide any details of the causes listed in the Notice.

The Landlord stated the Tenant brought a dog into the rental unit without her consent and in violation of the tenancy agreement. The Tenant stated he has removed the dog from the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

Subsections 47(1)(a), 47(1)(h) and sections 47(2) to 47(5) 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:
- [...]
- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- [...]
- (h) the tenant
- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- [...]

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (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.

[emphasis in italics added]

The 1 Month Notice was served on the Tenant in-person on December 5, 2022. Pursuant to section 47(4) of the Act, the Tenant had until December 15, 2022, being the expiry of the 10-day dispute period, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the Residential Tenancy Branch (“RTB”) disclose the Tenant’s Application was made on December 9, 2022. As such, the Application was made within the 10-day dispute period required by section 47(4) of the Act. However, as noted above, the Tenant did not serve the NDRP on the Landlord.

The Landlord did not provide any details on the 1 Month Notice whatsoever for the two causes listed in the 1 Month Notice for ending the tenancy. Section 47(3) states a notice given by a landlord under this section must comply with section 52 *[form and content of notice to end tenancy]*. Section 52 of the Act states:

Form and content of notice to end tenancy

- 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.

The form RTB-33 approved by the Director of the RTB for a One Month Notice to End Tenancy for Cause requires the landlord to check off the causes or causes for ending the tenancy. In addition, the One Month Notice requires the landlord to provide details, such as what, where and who caused the issue including the dates/times and names. In the present case, the Landlord did not provide any details for the causes to end the tenancy. As such, I find the 1 Month Notice did not comply with the form and content requirements of section 52 of the Act. Accordingly, the 1 Month Notice was not effective when it was served on the Tenant. Based on the foregoing, I order the 1 Month to be cancelled. The tenancy continues until it is lawfully ended in accordance with the provisions of the Act.

Conclusion

The 1 Month Notice is cancelled. The tenancy continues until it is lawfully ended in accordance with the provisions 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: May 6, 2023

Residential Tenancy Branch