



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, RP, PSF, LRE, RPP, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order for the landlord to return the tenant's personal property, pursuant to section 65;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Applicant DL (the tenant) and respondent JL (the landlord) attended the hearing. The landlord was assisted by agent RL. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that

each party was served with the respective materials in accordance with section 89 of the Act.

I note that section 55(1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except for the cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenant moved to the rental unit in 2011. Currently, monthly rent is \$550.00, due on the first day of the month. The parties do not share the bathroom or kitchen.

The tenant found an incomplete copy of the Notice with one page only in the rental unit around January 11 or 12, 2023.

The landlord registered mailed the three-page Notice to the tenant on January 09, 2023. The tracking number is recorded on the cover page of this decision.

The tenant affirmed that she received the notification from Canada Post regarding a registered mail package on January 15, 2023 and received it on January 18, 2023. The registered mail package contained the three-page Notice.

Canada Post indicates the tracking number provided by the landlord was mailed on January 09, available for pick up on January 12 and received on January 19, 2023.

The tenant submitted the Notice addressed to tenant DB into evidence. It is dated January 10, 2023 and the effective date is February 10, 2023. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The details of the cause are:

-The tenant frequently interfered in my marriage, got involved in my personal matters, and recently on August 14, 2022, she upset our relative to the point that he had to sleep on a sofa in our office. I gave her a notice to vacate on November 4, 2021 and she agreed to move out on July 31, 2022. When the home was almost dye she said that she was not moving out and was not making any attempt to seek other accommodations. I gave her a second vacate notice on October 10, 2022 with a move out date on January 10, 2023.

-Regularly failed to follow the laundry schedule.

The tenant disputed the Notice on January 24, 2023 and continues to occupy the rental unit.

The tenant stated that her maiden name is DB and that her legal name continued to be DL after the divorce.

RL testified that when he was married to the tenant her legal name was DL and he does not know her current legal name.

The parties provided testimony about the reasons to end the tenancy.

Analysis

Pursuant to Rule of Procedure 6.6, 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 landlord has the onus of proof to establish that the Notice is valid.

The one month notices to end tenancy for cause are form RTB 33, which contains three pages. I do not accept the service of the incomplete copy of the Notice, as the landlord must serve a complete copy of form RTB 33, per section 52(e).

Section 90(a) of the Act provides that a document served in accordance with section 88 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

[...]

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

Based on the landlord's convincing testimony and the tracking number, I find the landlord registered mailed the three-page Notice to the tenant on January 09, 2023.

Per section 90(a) of the Act, the tenant is deemed to have received the Notice on January 14, 2023.

I note the parties did not offer testimony about rebutting the deeming provisions.

I find the tenant disputed the Notice within the deadline of section 47(4) of the Act, as I deemed the tenant received the Notice on January 14, 2023 and the tenant disputed it on January 24, 2023.

Section 52 of the Act states:

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.

RTB Policy Guideline 43 states:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) require a tenancy agreement to include the correct legal names of the landlord(s) and tenant(s). Other documents, such as condition inspection reports and Notices to End Tenancy, also require correct legal names to be used.

The tenant informed her legal name is DL when she submitted this application. Based on the tenant's convincing and undisputed testimony, I find the tenant's legal name is DL, as the tenant did not change her name after the divorce.

I find that completing the approved form correctly is a requirement of section 52(e) for a notice to end tenancy to be effective, as it would not be necessary to use the approved form if the parties did not have to correctly complete it.

The Notice is addressed to DB. I find the Notice does not comply with section 52(e) of the Act, as the landlord did not properly name the tenant in the Notice.

Accordingly, the Notice is cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the Act.

As the Notice is cancelled because it does not comply with section 52 of the Act, I am not making any findings about the merits of the Notice. The landlord is at liberty to serve a new notice to end tenancy.

Pursuant to section 72 of the Act, as the tenant was successful in this application, the tenant is entitled to recover the filing fee.

Conclusion

The Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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 18, 2023

Residential Tenancy Branch