



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, LRE, 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;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

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.

The applicant was represented by advocate MB (the advocate). Landlord MP and witnesses DD and MC also attended the hearing. 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.

The landlord confirmed receipt of the notice of hearing in February 2023.

The landlord served the response evidence in person to the tenant on May 15, 2023 around 11:00 PM at the rental unit.

The advocate stated that the tenant did not receive the response evidence.

Witness MC testified that he is a tenant in the same rental unit and that he invited the landlord to the rental unit on May 15, 2023 around 11:00 PM. MC observed the landlord serve the response evidence in person to the tenant.

Based on the undisputed testimony, I find the tenant served the notice of hearing to the landlord in February 2023.

I find the convincing and detailed testimony offered by the landlord and witness MC outweighs the advocate's testimony. I find the landlord proved that he served the response evidence to the tenant on May 15, 2023.

I accept service of the notice of hearing and the response evidence in accordance with section 89(1) of the Act.

Preliminary Issue – Named Applicants

The application lists applicants tenants JB and the advocate. The advocate said that she is not a tenant and only represents tenant JB.

Pursuant to section 64(3)(a) of the Act and considering the advocate's undisputed testimony, I have amended the application to remove the advocate as an applicant.

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 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 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 tenancy started on May 11, 2022. Monthly rent is \$1,000.00, due on the first day of the month. The landlord collected and holds in trust a security deposit in the amount of \$500.00.

The landlord affirmed that he returned the \$100.00 pet damage deposit.

Both parties agreed the landlord served and the tenant received the Notice dated January 23, 2023 on that day in person.

The tenant submitted this application on February 01, 2023 and continues to occupy the rental unit.

The parties did not submit a copy of the Notice into evidence.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

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 most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Per Rule of Procedure 6.6, the landlord has the onus to substantiate the Notice.

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.

As a copy of the Notice was not submitted into evidence, I can not confirm if the Notice is in accordance with section 52 of the Act.

Thus, I find the landlord failed to substantiate the Notice. Accordingly, I cancel the Notice.

I note that 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.

As the tenant was successful in this application, pursuant to section 72 of the Act, I authorize the tenant to recover the \$100.00 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 30, 2023

Residential Tenancy Branch