



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks the following:

- an order canceling a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the Act; and
- to recover the cost of the filing fee under section 72 of the Act.

The Tenant and the Landlord’s Agent, A.W., attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord via registered mail. A.W. confirmed receipt of the Materials and raised no issues with service. Therefore, I find that pursuant to sections 89 and 90 of the Act that Tenant’s Materials were sufficiently served to the Landlord.

A.W. testified they served the Landlord’s evidence onto the Tenant on April 13, 2023 via registered mail. The Tenant confirmed they received a notification from Canada Post and went to collect the item but accidentally refused it and the Landlord’s evidence was returned. I find the Landlord’s evidence was served in accordance with section 88 of the Act and was deemed served on April 18, 2023, the fifth day after it was mailed, in accordance with section 90 of the Act. Policy Guideline 12 regarding service provisions confirms that refusal to accept the item does not override the deeming provisions. Accordingly, I admit the Landlord’s evidence into consideration.

Preliminary issue: Amendment

In their Application the Tenant initially disputed a 10 Day Notice to End Tenancy for unpaid rent and submitted an amendment to also dispute a One Month Notice to End Tenancy for Cause. Only a One Month Notice to End Tenancy was submitted into evidence by either party.

The parties agreed that only a One Month Notice to End Tenancy had been served onto the Tenant. The Tenant stated they only wanted to dispute the One Month Notice. A.W. testified that they understood this. Given this, I amend the Tenant's Application to remove the dispute of a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 64(3)(c).

Issues to be Decided

1. Is the Tenant entitled to an order canceling the Notice?
2. If not, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recover the filing fee for the Application from the Landlord?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy commenced on April 1, 2020.
- Rent is currently \$1,708.50 per month, due on the first day of the month.
- A security deposit of \$825.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement, which was entered into evidence by the Landlord.
- The Tenant still occupies the rental unit.

A.W. testified as follows. There have been two rent increases imposed during the tenancy. The first rent increase was effective January 1, 2022 and the second rent

increase was effective January 1, 2023. On January 1, 2023 the Tenant paid rent but paid the amount due before the rent increase took effect. A.W. sent a text message to the Tenant reminding them of the 2% rent increase and that an amount of \$33.50 was still owed. The Tenant said they would pay next month, which the A.W. accepted.

The Tenant did not pay the rent increase in February 2023 or March 2023. The Notice was served to the Tenant. The reason stated on the Notice is that the Tenant is repeatedly late paying rent. A copy of the Notice was entered into evidence by the Landlord. It is signed March 19, 2023 and the effective date is blank.

The rental arrears were paid by the Tenant after the Notice was served. There are currently no rental arrears. The Landlord seeks an Order of Possession.

The Tenant testified as follows. They were not refusing to pay rent, they just misunderstood the situation. They thought that a rent increase would take effect on April 1, 2023 to line up with the start date of the tenancy. When the Landlord's Agent explained to them about the rent increase they paid right away.

The Notice was discussed. The Tenant acknowledged receiving the Notice on March 19, 2023 when it was attached to their door. They stated they did not understand what the effective date of the Notice was as it was blank. A.W. stated they must have been in a rush and that was why the effective date of the Notice was not provided.

Analysis

Section 47 of the Act states that a landlord may end a tenancy for cause by issuing a Notice to End Tenancy. Section 47(1) provides the circumstances under which a landlord may issue a Notice to End Tenancy for Cause.

Section 47(4) of the Act states that a tenant may dispute a Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days of receiving the notice. The Tenant confirmed that they received the Notice on March 19, 2023 and the Application was filed on March 29, 2023. I find that the Tenant filed their Application within the timeframe set out in Section 47(4) of the Act.

Section 47(3) of the Act states that a Notice to End Tenancy for Cause must comply with section 52 of the Act which confirms the form and content requirements of a Notice to End Tenancy.

Section 52(d) of the Act states that in order to be effective, a notice to end tenancy must state the effective date of the notice. In this case, the Notice omits the effective date so it is in breach of section 52 of the Act.

Section 68(1) of the Act allows a notice to end tenancy that does not comply with section 52 of the Act to be amended, but there are conditions that must be met before this can happen, specifically that the Director must be satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and, in the circumstances, it is reasonable to amend the notice.

Given that there is a complete omission of the effective date, and not just a typographical error or a miscalculation, and that the Tenant testified that they did not understand what the effective date was, I find that neither of the conditions set out in section 68(1)(a) and (b) of the Act are met and the Notice should not be amended to comply with section 52 of the Act.

Therefore, I find that the One Month Notice to End Tenancy dated March 19, 2023 is defective and is of no force or effect as it does not comply with section 52 of the Act. I grant the Tenant's Application to cancel the Notice and the tenancy continues.

As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee.

Conclusion

The Tenant's Application is granted. The Notice is canceled and the tenancy continues.

I order that the Tenant may make a **one-time deduction of \$100.00** from a future rent payment in satisfaction of the return of 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 Act.

Dated: May 05, 2023

Residential Tenancy Branch