



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WELBEC PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on February 15, 2023 seeking

- a. a cancellation of the Landlord’s 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”)
- b. a cancellation of the Landlord’s One Month Notice to End Tenancy for Cause (the “One-Month Notice”)

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 8, 2023. In the conference call hearing, I explained the process and provided the attending party, the Landlord, the opportunity to ask questions.

Preliminary Matter – Tenant’s service of Notice of Dispute Resolution Proceeding and evidence, and the Landlord’s response materials

The Landlord who attended the hearing presented that they received some documents related to this hearing from the Tenant. In the Landlord’s recollection, the Tenant had dropped paperwork off at the office in the rental unit building. On February 25 the Landlord was notifying the Tenant that they had not received paperwork, as the Landlord verified by checking previous text messages during the hearing. The Landlord received only some medical documentation from the Tenant as evidence.

The Residential Tenancy Branch’s own records show the Tenant calling to the branch on April 18 seeking instructions on serving the Notice of Dispute Resolution Proceeding

and evidence. This was after a March 8 call to the Residential Tenancy Branch in which the Tenant was querying how to serve documents to the Landlord.

From what the Landlord presented in the hearing, which was very limited information, and the record of the Tenant seeking information from the Residential Tenancy Branch some time after their initial Application, I conclude the Tenant did not serve the Landlord the Notice of Dispute Resolution Proceeding and other evidence for this hearing. The Tenant was not in attendance to speak to the matter of service.

The *Act* s. 59(3) sets the duty for an applicant to provide the Notice of Dispute Resolution Proceeding for each application to the respondent. I find the Tenant did not serve the Notice of Dispute Resolution Proceeding for this Application. The *Act* s. 89 gives the rules for service of an application for dispute resolution. Basically, this is by leaving a copy with the person or their agent or sending a copy via registered mail.

For the reason that the Tenant did not serve the Landlord in a timely manner, I dismiss the Tenant's Application. This is without leave to reapply.

Issues to be Decided

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an order of possession in line with the 10-Day Notice as per s. 55 of the *Act*?

Background and Evidence

The Landlord in the hearing stated they presented 3 separate 10-Day Notices to the Tenant for rent unpaid on the 1st of each month. The Landlord did not present any copy of these documents for evidence in this hearing process. The Landlord stated they served these documents in January, March, and April 2023.

The Landlord focused on the February 6, 2023 One-Month Notice they served to the Tenant for "disturbances", as stated in the hearing. The Landlord more generally described incidents involving the Tenant over the past few years since the tenancy began.

The Tenant provided a single image of a One-Month Notice, dated February 6, 2023, setting the move-out date for March 31, 2023. The copy is unsigned by the Landlord.

This is a picture of the first page of the three-page document, with some other page showing in the image immediately behind the first page.

In the hearing, the Landlord stated they provided a signed copy of the One-Month Notice to the Tenant by attaching it to the door of the rental unit. This was the best method for being certain the Tenant would receive the document.

On my request, the Landlord provided their copy of the One-Month Notice to the Residential Tenancy Branch after the hearing had concluded. This copy bears the Landlord's signature, and indicates the reason for ending the tenancy on page 2, being "significantly interfered with or unreasonably disturbed another occupant or the landlord." There are no details provided in the separate section for that purpose on page 2. Page 3 gives no indication of how the Landlord served the document to the Tenant.

In the evidence, the Tenant provided an image of a 10-Day Notice, signed by the Landlord on April 12, 2023. A separate image shows the amount of \$970 owing on April 1, 2023 was not paid by the Tenant; presumably this was the reason the Landlord issued a 10-Day Notice to the Tenant.

Analysis

The *Act* s. 49 grants legal authority to a landlord to end a tenancy for reasons listed in that section. The Landlord must issue a notice to end the tenancy, and the One-Month Notice must comply with the s. 52 requirements for form and content.

The *Act* s. 52 states, in order to be effective a notice 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) . . . state the grounds for ending the tenancy, . . . and
- (e) when given by a Landlord, be in the approved form.

The Tenant did not present a complete copy of the One-Month Notice, and that first page was unsigned. I allowed the Landlord to provide a copy; however, that copy did not provide details as required on page 2. I cannot verify the legitimacy of the document where details were not provided. If this is the copy that was provided to the

Tenant, the Tenant then had no idea why the Landlord was seeking to end the tenancy and was prejudiced from presenting a complete case to the Residential Tenancy Branch in a dispute resolution proceeding.

Moreover, with one image provided by the Tenant having an unsigned copy, and the Landlord's copy then signed, I must question whether the Tenant in fact received a signed copy of the document, complete with all pages attached.

In this present matter, the Landlord has the burden of proof to show that there is sufficient reason to end the tenancy. I find the Landlord's evidence insufficient to show that they provided a complete signed One-Month Notice to the Tenant. I therefore cancel that One-Month Notice, and for that reason there is no Order of Possession to the Landlord.

The Tenant also applied to dispute a 10-Day Notice the Landlord apparently issued on February 6, 2023. The Landlord did not present other evidence in this hearing process, despite knowing of the pending hearing. The Landlord had the opportunity to provide sufficient evidence that they attempted to end the tenancy in a legally valid manner; however, as above, for this 10-Day Notice, there is no complete copy in the evidence, and the Landlord did not state that they even issued a 10-Day Notice in February 2023.

I find there is insufficient evidence about any attempt to end the tenancy for the reason of unpaid rent. The Landlord had the opportunity to clearly present evidence for this hearing, despite the Tenant not disclosing complete details about the hearing process to the Landlord.

By way of a separate application, the Landlord may apply for an order of possession; however, they will have to clearly present all details of their attempts to end the tenancy over the past few months, including documentation and clear evidence.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, as well as the One-Month Notice, without leave to reapply.

For the reasons outlined above, I grant no order of possession to the Landlord under s. 55 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 9, 2023

Residential Tenancy Branch