



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC MNRT MNDCT DRI RR RP PSF AS**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenant seeks:

- an order cancelling a One Month Notice for Cause dated December 30, 2022 (1 Month Notice) pursuant to section 47;
- an order to be paid back by the Landlord for the cost of emergency repairs made by the Tenant pursuant to section 33(5);
- a monetary order for compensation from the Landlord pursuant to section 67;
- an order regarding a disputed rent increase pursuant to section 43;
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65;
- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32;
- an order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 27; and
- an order to allow the Tenant to assign or sublet the rental unit when the Landlord has unreasonably withheld or denied permission pursuant to section 65.

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.

The Tenant stated she served the Notice of Dispute Resolution Proceeding (NDRP) on the Landlord in-person on February 9 or 10, 2023. The Landlord acknowledged she received the NDRP. As such, I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

The Landlord stated she served her evidence on the Tenant in-person but could not recall the date of service. The Tenant acknowledged she received the Landlord's evidence. As such, I find the Landlord's evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Service of Tenant's Evidence on Landlord

The Tenant state she served her evidence with the NDRP on February 9 or 10, 2023. The Landlord denied there was any evidence with the NDRP that was served on her. The Tenant did not provide any proof that her evidence was served on the Landlord, such as a witness statement or a written acknowledgment from the Landlord. As such, I find the Tenant has not proven, on a balance of probabilities, that her evidence was served on the Landlord. Based on the foregoing, I order the Tenant's evidence to be inadmissible for this proceeding.

Preliminary Matter – Severance and Dismissal of Tenant's Claim for Repairs

The Application included claims for (i) an order to be paid back by the Landlord for the cost of emergency repairs; (ii) a monetary order for compensation from the Landlord; (iii) an order regarding a disputed rent increase; (iv) an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord; (v) an order requiring the Landlord to complete repairs to the rental unit; (vi) an order for the Landlord to provide services or facilities required by the tenancy agreement or law; and (vii) an order to allow the Tenant to assign or sublet the rental unit when the Landlord has unreasonably withheld or denied permission (Tenant's Other Claims).

Rule 2.3 of the Rules states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Application was to whether the Tenant was entitled to cancellation of the 1 Month Notice. As such, I severed the Tenant's Other Claims. I will dismiss the Tenant's claim for monetary compensation from the Landlord and the claim to dispute a rent increase will be dismissed with leave to reapply. Whether I dismiss the balance of the Tenant's Other Claims will depend upon whether I cancel the 1 Month Notice or issue an Order of Possession to the Landlord.

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.

The parties agreed there was no written tenancy agreement. The parties agreed the tenancy commenced on February 1, 2017, on a month-to-month basis, with rent of \$1,000.00 payable on the first day of each month. The parties agreed that the Landlord reduced the rent because the Tenant's roommate vacated the rental unit. Based on the foregoing, I find there is a residential tenancy between the parties and that I have

jurisdiction to hear the Application. I note that there was testimony from the parties that indicated the Landlord may have increased the rent without complying with the provisions of the Act and the *Residential Tenancy Regulations*. I have severed and dismissed the Tenant's claim for an order regarding a disputed rent increase. As such, I make no findings in respect of whether the Landlord has collected rent in excess of the amount she is legally entitled require the Tenant pay under the provisions of the Act. However, I will dismiss the Tenant's claim to dispute a rent increase with leave to reapply.

The Tenant submitted into evidence a copy of the 1 Month Notice. The Landlord stated she served the 1 Month Notice on the Tenant in person on February 3, 2023. The Tenant acknowledged she received the 1 Month Notice. As such, I find the 1 Month Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

The 1 Month Notice did not indicate any specific cause to end the Tenant. The details section of the 1 Month Notice states:

Owner of home will be moving into basement suite and will rent upstairs full house for extra income.

Analysis

Section 47(1) of the Act states a landlord may end a tenancy for cause if the landlord can prove, on a balance of probabilities, that there has been a breach of one or more of the causes listed in sections 47(1)(a) Act. Sections 47(3), 47(4) and 52 of the Act state:

- 47(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.
- 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 Landlord state she served the Tenant with the 1 Month Notice in-person but she could not recall the date of service. The Notice was dated February 1, 2023. Assuming the 1 Month Notice was served on February 1, 2023, pursuant to section 47(4) of the Act, the Tenant had until February 11, 2023, 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 February 8, 2023. As such, the Application was made within the 10-day dispute period required by section 47(4) of the Act.

The Landlord did not specify any of the causes listed in the 1 Month Notice and, as such, failed to indicate the specific grounds for ending the tenancy. Furthermore, the Landlord stated in the details section of the 1 Month Notice that she was ending the tenancy so that she can move into the rental unit. In order for a landlord to end a tenancy for their own use, a landlord is required to serve the tenant with a Two Month Notice to End Tenancy for Landlord's Own Use, using a Form RTB-32, pursuant to the provisions of section 49 of the Act. Ending a tenancy for landlord's own use is not a cause to end a tenancy using a 1 Month Notice. As such, I find the 1 Month Notice does not comply with the form and content requirements of section 52 of the Act and, therefore, does not comply with section 47(3). Based on the above, I find the 1 Month Notice was not valid when it was served on the Tenant. I order the 1 Month Notice to be cancelled. The tenancy continues until it is lawfully ended pursuant to the provisions of the Act.

As I have cancelled the 1 Month Notice, I order the Tenant's Other Claims to be dismissed with leave to reapply. The Tenant may file a new application for dispute resolution with the Residential Tenancy Branch to seek the Tenant's Other Claims.

Conclusion

The 1 Month Notice is ordered cancelled. The tenancy continues until it is ended in accordance with the provision of the Act.

The Tenant's Other Claims are dismissed with leave to reapply.

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: June 7, 2023

Residential Tenancy Branch