



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RR, PSF, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on April 24, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice;
- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlord to provide facilities required by the tenancy agreement or law; and
- An order suspending or setting restrictions on the Landlord's right to enter the rental unit.

The hearing was convened by telephone conference call at 11:00 am on June 13, 2023, and was attended by the Tenant, their advocate JN, and the Landlord. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

In their Application the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. I therefore exercised my discretion to dismiss the remaining claims with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an order of possession pursuant to section 55(1) of the Act?

Background and Evidence

The Landlord stated that the One Month Notice was sent to the Tenant by registered mail on March 7, 2023. Although the Tenant could not recall the date it was received, they acknowledged receipt sometime thereafter.

Only the Tenant submitted a copy of the One Month Notice, which included only the first two pages. The Tenant and their advocate stated that the third page was never received. The Landlord stated that all three pages were served.

The One Month Notice in the documentary evidence before me from the Tenant is signed and dated March 7, 2023, and has an effective date of April 15, 2023. On the second page of the Two Month Notice the Landlord selected the ground indicating that the tenancy was being ended because the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the

property. Although the Landlord made significant notations in the details of cause section of the One Month Notice, no information about what the alleged illegal activity is was included.

Analysis

Although the Tenant originally filed the Application seeking cancellation of the One Month Notice on April 4, 2023, their Application was not considered filed in accordance with section 59(2) and rule 2.6 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure) until April 24, 2023. Further to this, the Tenant did not seek as part of their Application, and extension to the time period set out under section 47(4) of the Act.

Based on the above, I find that the Tenant did not dispute the One Month Notice until April 24, 2023, which is well beyond the time period set out under section 47(4) of the Act. Although section 66(1) of the Act permits me to extend a time period established under the Act in exceptional circumstances, the Tenant did not seek an extension to the time period set out under section 47(4) of the Act. Even if they had, I find that I would have been unable to extend that time period to the date of the Application, April 24, 2023, pursuant to section 66(3) of the Act, as the Application date is beyond the effective date of the One Month Notice.

As a result, I dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply, as they did not dispute it on time, and I cannot extend the time period set out under section 47(4) of the Act to the date of Application.

Although I would ordinarily grant the Landlord an order of possession for the rental unit in these circumstances pursuant to sections 47(5) and 55(1) of the Act, I decline to do so here as I am not satisfied by the Landlord that the One Month Notice served on the Tenant complies with section 52 of the Act. When a tenant disputes a notice to end tenancy, the burden falls on the landlord to establish that they have grounds to end the tenancy and obtain an order of possession. In this case, the Tenant denied receipt of page 3 of the One Month Notice, which contains valuable information on timelines and the Tenant's rights. Although the Landlord stated that all three pages were served, they submitted no documentary or other corroboratory evidence of this, called no witnesses, and failed to submit a copy of the One Month Notice. As a result, and as the Tenant submitted only the first two pages of the three-page form, I find that I cannot be satisfied

that all three pages were served as required. As a result, I find that the Landlord has failed to satisfy me that the One Month Notice complies with section 52(e) of the Act.

Conclusion

Although I have dismissed the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply, the One Month Notice dated March 7, 2023, remains unenforceable by the Landlord as it does not comply with section 52 of the Act as set out above.

As a result, I order that this tenancy continue in full force and affect until it is ended by one or more of the parties in accordance with the Act.

Further to the above, a concerning pattern appears to be developing on the part of the Landlord in relation to their attempts to end this tenancy. In the last year the Landlord has served at least 3 other One Month Notices in relation to this rental unit, all of which were cancelled by the Branch due to either lack of service or lack of compliance with section 52 of the Act. The Landlord has also unsuccessfully sought an early end to this tenancy within the last year under section 56 of the Act. I therefore caution the Landlord that continued attempts to end this tenancy via defective or improperly served notices to end tenancy may well give rise to a loss of quiet enjoyment on the part of the Tenants of the rental unit, if it has not already, and subsequently claims for monetary compensation due to this loss.

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: June 13, 2023

Residential Tenancy Branch