



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

On March 23, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, with S.M. attending as an advocate for the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

S.M. advised that the Landlord was served the Notice of Hearing package by registered mail on March 30, 2023, and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Tenant’s Notice of Hearing package.

S.M. acknowledged that the Tenant did not submit any documentary evidence for consideration on this file. The Landlord also acknowledged that he did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 28, 2019, that rent was currently established at \$1,656.00 per month, and that it was due on the first day of each month. They also agreed that a security deposit of \$800.00 was paid. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration by either party.

The Landlord advised that the Notice was served to the Tenant by attaching it to her door and by placing in her mailbox, but he was not sure when he did this. The Tenant confirmed on her Application that the Notice was received on March 16, 2023, when it was attached to her door. The Landlord checked off a number of reasons on the Notice; however, neither party uploaded a copy for consideration. As such, both parties were Ordered to submit a copy of the Notice by the end of the day. In the meantime, the details on the Notice were reviewed with both parties.

The Landlord was informed that the onus would be on him to make submissions to support the reasons the Notice was served. He provided testimony which was not clearly organized or structured but was more in a stream of consciousness manner that rapidly jumped from random thoughts regarding different aspects of the history of the tenancy. Attempting to document these submissions in a logical or comprehensible sequence was difficult, at best. In summary, the Landlord advised that the Tenant had multiple people living in the rental unit contrary to the tenancy agreement, and that a person was arrested on the property days ago. As well, he testified that the Tenant

turned off the heat and that the rental unit was “disgusting”. He stated that the Tenant had a dog and cats in the rental unit contrary to the tenancy agreement. As well, he submitted that the Tenant operated a meat cooker in the bedroom. He testified that there is a rotten mattress in the rental unit that smells of urine and that the Tenant does not cut the grass. Finally, he advised that the roof is not leaking and that the walls are dripping with water because the Tenant does not use the heat and because of the use of the meat cooker indoors.

S.M. advised that while the Tenant has a large family, she does not have any occupants living in the rental unit with her. As well, he stated that the rest of the Landlord’s allegations are not true.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided by both parties by the end of the day on June 30, 2023, as it was essential to the matter at hand.

The Landlord complied with this Order and provided a copy of this Notice by uploading it to the Residential Tenancy Branch system after the hearing concluded. However, the Landlord also elected to submit a number of other items as documentary evidence. These items were not requested, nor were they permitted to be submitted by myself, and it is not clear why the Landlord believed it was appropriate to do so. Regardless, this additional documentary evidence will be excluded and not accepted when rendering this Decision.

The Tenant did not comply with my Order to submit a copy of the Notice. Both the Tenant and S.M. were provided with clear instruction to submit a copy of this Notice for consideration, and it is not clear why they were unable to follow a simple direction.

Regardless, I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52, and that it is a valid Notice.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a Notice, the burden of proof is on the Landlord to substantiate the reasons for ending the tenancy. I have considered the

parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Given the contradictory testimony and positions of the parties, and given that the Landlord did not submit any supporting documentary evidence for consideration despite having months to do so, I am not satisfied that the Landlord has established any grounds to substantiate service of the Notice. Therefore, I find that the Notice is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause, in relation to this Application, of March 15, 2023, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: July 4, 2023

Residential Tenancy Branch