



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, FFL, CNC, FFT

Introduction

This hearing was set to deal with cross applications. The landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause (“One Month Notice”) dated May 16, 2023. The tenant applied to cancel a One Month Notice, among several other remedies.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Reference to landlord in this decision includes the owner and the property manager, as both meet the definition of “landlord” under section 1 of the Act.

Preliminary and Procedural matters

I explored service of hearing materials upon each other. The property manager testified that the landlord’s proceeding package was posted to the tenant’s door and the landlord’s evidence was sent to the tenant via email. The tenant confirmed receipt of these packages and did not take issue with service by email. Accordingly, I found the tenant duly served with the landlord’s proceeding package and I deemed the tenant sufficiently served with the landlord’s evidence via email.

The tenant was uncertain how he served his proceeding package upon the landlord but testified that it was done on October 12, 2023. The property manager confirmed receiving an application receipt from the tenant on October 12, 2023. However, I noted

that the tenant's proceeding package was generated by the Residential Tenancy Branch on October 13, 2023 and further enquiry revealed the tenant had filed another Application for Dispute Resolution on October 12, 2023. The property manager testified he was unaware the tenant had filed to dispute the One Month Notice. I was unsatisfied the tenant served the landlord with his proceeding package.

Both parties confirmed that they had come to this hearing prepared to deal with the One Month Notice dated May 16, 2023. By way of this decision, I have made a decision as to the effectiveness of the One Month Notice. I did not consider any of the other remedies sought by the tenant on his application and those requests are dismissed with leave to reapply.

During the hearing, the landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent has also been served to the tenant and a copy had been uploaded as evidence. However, the landlord had not served an Amendment to add the 10 Day Notice as an issue to be determined at this proceeding. Accordingly, the landlord is at liberty to file another Application for Dispute Resolution to seek an Order of Possession based on a 10 Day Notice and the only matter before me was the effectiveness of the One Month Notice.

Issue(s) to be Determined

Has the landlord issued a valid and enforceable notice to end tenancy? If so, is the landlord entitled to an Order of Possession?

Background and Analysis

The landlord and two co-tenants entered into a written tenancy agreement set to commence on January 1, 2022 for a one-year fixed term. The rent was set at \$3200.00 due on the first day of every month.

The landlord submitted that on April 10, 2022 the co-tenant approached the landlord to end the co-tenancy as she had complaints about living with the tenant. According to the landlord, he and the co-tenants agreed the co-tenancy would end on April 15, 2022 and the landlord would continue to rent to the tenant only. A new written tenancy agreement was not prepared by the landlord.

The subject One Month Notice was attached to the rental unit door on May 16, 2023. The tenant had applied to dispute the One Month Notice on May 24, 2023 and applied

for a Substituted Service Order to seek authorization to serve the landlord via email but an Adjudicator denied the tenant's request for substituted service.

In turning to the One Month Notice, I see that the landlord's service address is listed as being the rental unit address but I heard from the parties that the landlord does not reside at that address. Rather, the tenant resides at the rental unit with roommates or by himself.

Analysis

The landlord's application is made pursuant to section 55(2)(b) of the Act, which states:

(2)A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Where a landlord seeks an Order of Possession under section 55(2)(b) the landlord bears a burden to prove the tenant was duly served with a notice to end tenancy that complies with the Act.

Section 52 of the Act provides for form and content for an effective notice to end tenancy. Below, I have reproduced section 52:

Form and content of notice to end tenancy

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**.

[My emphasis added]

In this case, the landlord used the approved form. The approved form requires the landlord to provide the landlord's address. One of the primary purposes for requiring a landlord to provide the landlord's address is so that the tenant may dispute the notice and serve the landlord with the hearing documents; however, in completing the form the landlord provided the rental unit as the landlord's service address and I find this to be problematic and prejudicial for the tenant.

I was provided unopposed evidence that the landlord does not reside at the rental unit and in providing the rental unit as the landlord's service address the tenant ability to serve the landlord with a proceeding package is significantly hindered since the tenant cannot serve the landlord in one of the permissible ways: in person or by registered mail. A tenant may serve a proceeding package by email but only if the landlord had agreed or consented to being served by email. I was not provided documentation that demonstrates the landlord had consented to being served by email.

I note the written co-tenancy agreement provided by the landlord contains a different address for the landlord; however, the landlord's own testimony pointed to the co-tenancy having ended. Residential Tenancy Branch Policy Guideline 13 provides the following information and policy statements with respect to co-tenancy agreement. The policy guideline provides, in part, under the heading E. ENDING A TENANCY:

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

If a tenant remains in the rental unit and continues paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.

Given the ending of the co-tenancy agreement, and lack of a new written agreement, the tenant was left with a service address that appeared on the One Month Notice.

The tenant did make efforts to seek permission from the Director of the Residential Tenancy Branch to serve the landlord with his proceeding package by email but was denied by an Adjudicator.

In light of the above, I find the landlord did not issue a One Month Notice issued that is effective and I deny the landlord's request for an Order of Possession based on that notice.

The landlord is at liberty to issue another One Month Notice; however, I ORDER the landlord to provide an address at which the tenant may serve the landlord with proceeding documents in person or by registered mail on all subsequent notices.

Conclusion

I am unsatisfied the landlord served an effective One Month Notice to End Tenancy on May 16, 2023 and I deny the landlord's request for an Order of Possession.

The tenant's application to cancel the One Month Notice dated May 16, 2023 is moot and the other remedies sought by the tenant were 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: November 06, 2023

Residential Tenancy Branch