



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of two One Month Notices to End Tenancy for cause dated August 4, 2023 (the August 4 Notice) and August 31, 2023 (the August 31 Notice), under section 47 of the Act
- authorization to recover the filing fees under section 72 of the Act

I note that section 55(1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Tenant TE (the Tenant), the landlord's agents EW and DF and counsel AC (the Landlord) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties each confirmed receipt of the notices of hearing and evidence for both applications.

Based on the testimonies I find that each party was served with the notices of hearing and evidence in accordance with section 89 of the Act.

Issues to be Decided

Is the Tenant entitled to:

1. Cancellation of the August 4 Notice?
2. Cancellation of the August 31 Notice?
3. An authorization to recover the filing fees?

If the Tenant's applications are dismissed, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the Landlord's obligation to present the evidence to substantiate the Notices.

Both parties agreed the tenancy started on September 15, 2011. Monthly rent today is \$1,756.77, due on the first day of the month. The Landlord collected and secured a security deposit of \$800.00 and a pet damage deposit of \$400.00.

Both parties agreed the Landlord served a prior one month notice to end tenancy for cause dated March 24, 2023 (the March Notice), and a decision dated June 14, 2023 cancelled the March Notice.

The Landlord registered mailed the August 4 Notice on August 4, 2023 and the Tenant received it on August 15. The Tenant disputed this Notice on August 16, 2023.

The Landlord registered mailed the August 31 Notice on August 31, 2023 and the Tenant received it on September 7. The Tenant disputed this Notice on September 17, 2023.

The Landlord submitted the August 4 Notice into evidence. The effective date is September 30, 2023. The reasons to end the tenancy are:

- **Tenant has not done required repairs of damage to the unit/site.**
- **Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.**
- Non-compliance with an order under the legislation after the tenant received the order or the date in the order.

(emphasis added)

The details of the events are:

The Tenant has not complied with the arbitrator's decision dated June 14, 2023, File No: ***164 and *****918.** The Decision stated that, "The Tenant's request that the Landlord comply with the tenancy agreement is granted as it relates to the Landlord's consent to the Tenant operating a mushroom growing business from the shed. The Tenant must ensure this business does not occur in the residential home, and that she does not store business items in the home, nor allow the accumulation of mushroom manure or pallets on the property. The Tenant must remove the awning and drying shed within 30 days of the date of this Decision."

A property inspection by the Landlord's employee on July 27, 2023, revealed that while the drying shed had been removed the awning was still in place and package of mushroom manure or growth material were found in the basement closet and basement utility room. The accumulation of compost material/mushroom manure was also on the property on July 26, 2023. See cover letter to this notice for more details. The tenant has smoked or allowed smoking in the rental unit despite repeated written warnings contrary to a material term of the tenancy.

(emphasis added)

The Landlord submitted the August 31 Notice into evidence. The effective date is October 31, 2023. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
 - Put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- **Tenant has not done required repairs of damage to the unit/site.**
- **Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.**

(emphasis added)

The details of the events are:

This notice does not cancel the one month notice to end tenancy dated Aug/04/2023. **The tenant has not complied with the arbitrator's decision dated June 14, 2023, File #*****164 and *****918.** The Arbitrator said "I find that it is a material term of the parties' agreement that the Tenant's mushroom growing business is confined to the shed and that she does not store business related items in the residential home and that she does not allow the accumulation of mushroom manure or pallets on the property". After completing an inspection on July 27, 2023, it was confirmed that the tenant was in breach of her lease for not confining all mushroom activity inside of the shed.

On August 4, 2023, the landlord issued a one-month notice for non-removal of the awning, compost accumulation, smoking and a demand letter demanding that the tenant confine all activity to the shed within 7 days. A property inspection by two of the Landlord's employees on August 28, 2023, confirmed that the tenant has not confined her mushroom business to the shed, continues to operate the mushroom business inside of the home, has not stopped smoking inside the home and has allowed the accumulation of mushroom manure on the property. This is a further one month notice for a material breach that has not been cured within a reasonable time after written notice to do so.

(emphasis added)

The Landlord affirmed some reasons in both Notices overlap and are redundant because the Landlord wanted to make sure that he served the notices to end tenancy for all the alleged tenancy breaches.

The Tenant affirmed that it was confusing to receive 2 one month notices to end tenancy for cause in less than one month with multiple reasons to end the tenancy.

The Landlord affirmed that each notice to end tenancy clearly indicates the reasons to end the tenancy and that the Tenant was able to dispute each notice and submit evidence.

Analysis

The Landlord has the burden to prove that he has sufficient grounds to issue the August 4 and 31 Notices, per Rule of Procedure 6.6.

Section 52 of the Act states:

- 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.

I accept the Tenant's convincing testimony that the August 4 and August 31 Notices are confusing.

I find the August 4 and 31 Notices clearly overlap and are confusing, as the Landlord mentioned 3 reasons to end the tenancy in the August 4 Notice and 4 reasons in the August 31 Notice, and 2 of the reasons overlap.

I find that the fact the Tenant disputed both Notices and submitted evidence does not overcome the fact that both Notices, served within 27 days, are confusing and overlap.

For the above reasons, I find the Notices do not comply with section 52(d) of the Act, as they do not clearly state the reasons to end the tenancy.

Accordingly, the August 4 and August 31 Notices are cancelled and of no force or effect.

I note that I am not making factual findings about the causes for the Landlord to issue the August 4 and August 31 Notices. Thus, the Landlord may serve a new notice to end tenancy for the same reasons.

As the Tenant is successful with her claims, pursuant to section 72 of the Act, I authorize the Tenant to recover the \$100.00 filing fee. I only authorize the Tenant to recover one filing fee, as the Tenant could have amended the first application to dispute the notice to end tenancy received at a later date, rather than submitting a new application for dispute resolution.

Conclusion

The August 4 and August 31 Notices are cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a), I authorize the Tenant to deduct \$100.00 from the next rent payment to recover the filing fee.

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: November 20, 2023

Residential Tenancy Branch