



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenant filed their application on June 28, 2024. The Tenant seeks:

- Cancellation of the Landlord's One Month Notice for Cause (per section 47 of the *Act*).
- An order of compliance from the director (per section 62 of the *Act*).

The Landlord filed their application on July 22, 2024. The Landlord seeks:

- An order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent (per section 55 of the *Act*).
- A Monetary Order for Unpaid Rent (per section 67 of the *Act*).
- Recovery of their \$100.00 filing fee (per section 72 of the *Act*).

Tenant SVS attended the hearing for the Tenant. RF attended the hearing for the Landlord.

Tenant SVS attended the hearing 11 minutes late.

Service of Records

- *Tenant's Records to the Landlord*

RF testified that they never received any records from the Tenant at any time. The Tenant testified that they were unaware that they had to serve their application to the Landlord.

During my review of the Tenant's application, I found the following note left in the file by a Residential Tenancy Branch information officer on July 22, 2024:

[the Landlord] called stating that they've served a One Month Notice and 10 Day Notice to the [the Tenant] - [the Landlord] inquired if [the Tenant] has applied to dispute the Notice(s). [the Information Officer] found this file and provided info to [the Landlord] - [the

Landlord] stated they have not rec'd NODRP docs and requested courtesy copy. IO sent by email and [the Landlord] confirmed receipt during call. [the Landlord] stated they may file app re: 10 Day Notice as well.

RF testified that it was not they that called the Residential Tenancy Branch and that it was BM, the owner of the complex in which the Rental Unit is in, that called the Branch. RF testified that they believe BM received the application from the Residential Tenancy Branch.

The only relevant documentary evidence submitted to the Residential Tenancy Branch by the Tenant is a copy of the One Month Notice that was served to the Tenant by the Landlord. Therefore, the only issue before me with respect to service from the Tenant to the Landlord is whether the Landlord has been sufficiently notified of the claim(s) made against them.

I find, based on all of the above, pursuant to section 71(2)(c) of the *Act*, that the Proceeding Package has been sufficiently served to the Landlord for the purposes of the *Act*. There is sufficient evidence before me to make the finding that BM received a courtesy copy of the Proceeding Package on July 22, 2024. I caution the Tenant that it is the applicant's responsibility to notify a respondent. Had the Landlord not contacted the Residential Tenancy Branch to seek a courtesy copy, the Tenant's application would have been dismissed for lack of service to the Respondent. The need to serve the counterparty is clearly outlined in the Proceeding Package that was emailed to the Tenant on July 9, 2024.

- *Landlord's Records to the Tenant*

The Landlord submitted a signed and dated witness statement indicating that on July 23, 2024, RF was witnessed by MB serving the Tenant in person with a copy of the Landlord's application and documentary evidence. RF testified that they served the Tenant with all the Landlord's records, which are submitted to the Residential Tenancy Branch for consideration, except for several videos.

The Tenant acknowledged receipt of all the above records, except for the unserved videos.

I find, pursuant to the Tenant's acknowledgment of receipt, that the Landlord served the Tenant with their application and documentary evidence (except for the above-mentioned videos), pursuant to sections 88 and 89 of the *Act*. In making my decision I have not considered the videos submitted by the Landlord.

Background Facts and Evidence

I have reviewed all evidence, including the testimony of the parties, but I will refer only to what I find relevant to my decision.

The parties have filed separate applications regarding two different rental units at the same complex in which the two rental units are in (the **Rental Building**).

The Tenant's application is in relation to unit 29 of the Rental Building, while the Landlord's application is in relation to unit 20 of the Rental Building.

The only tenancy agreement submitted by the Landlord is a tenancy agreement signed by an agent of the Landlord on March 23, 2023.

The parties agreed that:

- The Tenant initially occupied unit 23 of the Rental Building, but sometime in July 2023, the Tenant moved into rental unit number 20.
- The Tenant's monthly rental obligation is \$915.00.
- The Landlord is holding a \$457.50 security deposit in trust for the Tenant, which the Tenant paid to the Landlord in cash on April 5, 2023.
- On June 19, 2024, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, dated June 18, 2024 (the **One Month Notice**), by attaching the One Month Notice to the Rental Unit's door.
- On July 3, 2024, the Landlord served the Tenant with a 10 Day Notice for Unpaid Rent, dated July 3, 2024 (the **10 Day Notice**), by attaching the same on the Rental Unit's door and via email.

The parties agreed on little else. RF testified that:

- In March 2024 the Tenant requested that he be allowed to move into unit 29, which requested was accepted by the Landlord, but the Tenant has not finished their move to date (this hearing took place on August 12, 2024).
- The Tenant had approximately one month to move.
- The Tenant had until April 1, 2024, to move.
- To date, the Tenant has paid rent for one unit on or before the first day of every month.

The Tenant testified that:

- They are currently occupying rental unit 20, not rental unit 29.

- At all times, their negotiations in relation to their move from unit 20 to unit 29 was with BM, not RF, and BM never provided the Tenant with a deadline.
- The Landlord never provided the Tenant with an April 2024 deadline.
- Approximately one week prior to receiving the One Month Notice, BM informed the Tenant that the Tenant can “take [their] time” with getting unit 29 ready for occupation.

I have reviewed copies of both eviction notices. The 10 Day Notice is in relation to rental unit 20. More precisely, on page one of the 10 Day Notice, I can see the following statement: “I, the Landlord, give you 10 days’ notice to move out of the rental unit/site located at: 20...” On page two of the 10 Day Notice, the Landlord has stated that the Tenant failed to pay rent due on July 1, 2024, in the amount of \$985.00. RF testified that the \$985.00 amount is a mistake, and the figure should have been \$915.00.

On page one of the One Month Notice, I can see the following statement: “I, the Landlord, give you One Month’s Notice to move out of the rental unit/site located at: 29...”

On page two of the One Month Notice, the Landlord has selected the following ground for ending this tenancy: the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

RF did not dispute the Tenant’s testimony that it was BM and the Tenant that discussed the Tenant’s move from unit 20 to 29, but they testified that BM has been in regular contact with RF and the Tenant’s conduct warrants an eviction from the Rental Building.

The parties provided extensive testimony regarding the Tenant’s conduct at the Rental Building. Where relevant, I will summarize the parties’ testimony in the Analysis section of my decision.

Analysis

- *The Landlord’s application*

Section 1 of the *Act* provides the following definitions for “tenancy” and “tenancy agreement” (underlined by me for emphasis):

“tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

In this case, based on the submission of the parties at the hearing, I find that the Tenant's sole tenancy agreement with the Landlord is in relation to unit 20. RF did not dispute the Tenant's testimony that the Tenant discussed their move from unit 20 to unit 29 with BM, the owner of the Rental Building. BM never attended the hearing to provide evidence, but they did provide a statement. In their statement, in relation to the two units, BM only states that "In conjunction [*sic*] with the one month notice, we have also filed a 10day [*sic*] notice for unpaid rent as [the Tenant] is occupying two units, 20 and 29 and only paying for one".

RF's own submission at the hearing was that in March 2024, the Tenant requested a move from unit 20 to unit 29, not that the Tenant requested to rent both units. I cannot accept RF's testimony that the Tenant was provided with an April 1, 2024, deadline, because RF was not a party to the discussions between the Tenant and BM, and RF provided no documentary evidence to overcome the Tenant's vehement opposition to any notion that they only had until April 1, 2024, to move.

I find it highly curious that BM makes no mention of an April 1, 2024, deadline, or any other deadlines, in their statement. In addition, the Landlord's 10 Day Notice states that the Tenant has not paid rent due on July 1, 2024. RF provided no explanation for why July 1, 2024, was selected as the first month for unpaid rent for the second tenancy, if the Tenant had an April 1, 2024, deadline to move.

For emphasis, I will again highlight RF's testimony that the Tenant requested to move from unit 20 to unit 29. Therefore, if there was an agreement in this case, the agreement was for the modification of the rental unit from 20 to 29, not for two tenancies.

The Tenant testified that they are making modifications to unit 29 and that they have not yet moved into unit 29. Unlike in July 2023, when the Tenant moved from unit 23 to unit 20, the parties have not modified their written tenancy agreement.

The Landlord may very well have a claim for compensation pursuant to section 67 of the *Act* because of the Tenant's failure to move into unit 29 in a timely manner, but my role in this case is to adjudicate the Landlord's application for an Order of Possession pursuant to a 10 Day Notice for Unpaid Rent and Utilities in relation to unit 20.

There is no dispute that the Tenant has paid one set of rent to the Landlord to date, on or before the first day of every month, including on July 1, 2024. As the parties only have one tenancy agreement in this case (irrespective of any possible claims for damages as a result of the Tenant's slow move), the Tenant did not have an unpaid rent balance for unit 20 when the 10 Day Notice was issued. In the result, I must cancel the 10 Day Notice.

The 10 Day Notice is cancelled and is of no force or effect. The Landlord's application is dismissed in its entirety, without leave to reapply, including their claim for unpaid rent and the filing fee. The filing fee claim is dismissed because the Landlord was unsuccessful with their application.

○ *The Tenant's application*

The Tenant acknowledged receipt of the One Month Notice in accordance with section 88 of the *Act*. The parties agreed that the Tenant was served with the One Month Notice on June 19, 2024. Section 47(4) states that a tenant may dispute a one month notice within 10 days of receipt. The Tenant disputed the One Month Notice on June 28, 2024, which is within 10 days of June 19, 2024. I find the Landlord bears the onus to prove that they had ground to issue the One Month Notice.

Section 47(3) of the *Act* states that a notice given under section 47 of the *Act* must be in accordance with the form and content requirements of section 52 of the *Act*, which in part, states that a notice to end tenancy can only be effective when the notice is in writing and, among other requirements, gives the address of the rental unit.

In this case, the One Month Notice is in relation to a rental unit that the tenant has not yet moved into. As I have already found, the parties have not modified their tenancy agreement regarding unit 20 and the Tenant has not signed a second tenancy agreement with the Landlord. The only agreement between the parties appears to be that the Tenant is to move from unit 20 to unit 29, something that has not yet happened.

I acknowledge that the Tenant's behaviour in this case is problematic. But before I can provide the Landlord with an order of possession, I must be satisfied that the underlying eviction notice meets the statutory requirements set by the *Act*. In this case I find the One Month Notice to be non-compliant, because the One Month Notice includes an incorrect address.

I grant the Tenant's application to dispute the One Month Notice. The One Month Notice is cancelled and is of no force or effect. The Landlord may issue a new eviction notice citing the correct address.

The Tenant did not provide submissions regarding their application for an Order of Compliance, and I cannot find any reasons to give such an order against the Landlord. In their paper application, the Tenant has stated that they wish to continue their tenancy. This aspect of the Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application to dispute the One Month Notice is granted. The One Month Notice is cancelled and is of no force or effect. The Tenant's application for an order of compliance is dismissed, without leave to reapply.

The Landlord's application is dismissed in its entirety, without leave to reapply. The 10 Day Notice is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

The Landlord may issue the Tenant with a one month notice to end tenancy for cause in relation to unit 20, which is the unit currently being occupied by the Tenant.

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: August 12, 2024

Residential Tenancy Branch