



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the Residential Tenancy Act (the "Act") seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") and for an order directing the landlord to comply with the Act regulation or tenancy agreement.

The tenant, advocates for the tenant, the landlord and her representative/translator attended the teleconference hearing.

The parties were provided an overview of the hearing process and were given the opportunity to ask questions prior to the hearing.

The parties provided testimony, were provided the opportunity to present their evidence orally and to refer to their documentary evidence sent prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence.

I have only considered the evidence that was served in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules").

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Is the tenant entitled to orders requiring the landlord to comply with the Act?

Background and Evidence

The undisputed evidence is that the tenant received the Notice from the landlord on May 5, 2019, and applied to dispute the Notice on May 13, 2019, which I note is within the 10 day timeframe required by the Act. A copy of the Notice was submitted in evidence.

According to the Notice and the parties, the landlord neglected to fill out the “Details of Cause(s)” section of the Notice to explain the details of the causes marked on the Notice form, as instructed. On the Notice under “Details of Cause(s)” it indicates that the RTB may cancel the notice if details are not provided.

As to the tenant’s request for an order requiring the landlord to comply with the Act, during the hearing and through his documentary evidence, the tenant submitted that the landlord and/or her representative enters his rental unit unannounced and uninvited at any time when they feel like it.

In response to my inquiry, the landlord’s representative confirmed that there was no written tenancy agreement for this tenancy. The only written document relating to this tenancy, submitted into evidence by the landlord, was an undated handwritten, one page statement, which among other things, states “Owner checked basement every two weeks”.

In response to my inquiry, the tenant submitted that this tenancy began on January 1, 2015, and that the beginning monthly rent was \$700.00. The tenant submitted that his monthly rent was raised to \$850.00 approximately 2 years ago, in a single rent increase. The tenant submitted he agreed to this rent increase because the landlord threatened to evict him if he did not.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice issued by landlord – Section 52 of the Act applies in this case and states:

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 the matter before me, I find the Notice does not comply with section 52 of the Act and is invalid as it does not state the “Details of Cause(s)” portion which would set out the specific allegations of the causes listed by the landlord on the Notice. Therefore, I find the Notice is not valid as it is missing necessary and required information. The Act requires that notices to end tenancy issued by the landlord be in the approved form due to the fact that the approved forms contain all of the required information a tenant would require to dispute the Notice if necessary.

As a result, I order the landlord’s 1 Month Notice to End Tenancy for Cause dated May 5, 2019, be cancelled and therefore has no force and effect. I order that the tenancy will continue until ended in accordance with the Act.

Order suspending or setting conditions on the landlord’s right to enter the rental unit-

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with section 29 of the Act.

Pursuant to section 29 of the Act, a landlord **may not** enter a tenant’s rental unit **without giving a proper written notice of entry to do so.** Among other requirements, section 29(1)(b)(ii) of the Act **requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.** [My emphasis added]

In considering the undisputed evidence of the tenant, I find that the landlord has entered the rental unit of the tenant without notice as required by section 29 of the Act.

I advised the landlord during the hearing of her obligations to provide the tenant with a proper written notice to enter the rental unit, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenant's door, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by registered mail, the tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

As I have found that the landlord is entering the rental unit without proper notice required by law, I therefore order the landlord to comply with her obligations as described above in providing notice to the tenant, which must also contain the specific time, date, and purpose for entering.

The landlord is advised that her failure to comply with this order may subject the landlord to financial compensation being granted to the tenant for his loss of quiet enjoyment and for an order suspending the landlord's rights to enter the rental unit.

The landlords were advised that under section 13 of the Act, the landlord is required to prepare a written tenancy agreement for every tenancy and that the written tenancy agreement must conform to any requirements under the Residential Tenancy Regulations and this section. In this case, they did not prepare the written tenancy agreement. I therefore order the landlord to comply with her obligations as described.

While the tenant has not applied to dispute an additional rent increase or seek compensation for an illegal rent increase, the landlord is advised that they may not increase the rent more than the yearly allowable amount as per Residential Tenancy Regulations ("Regulations") # 22. While it is not clear when the landlord increased the monthly rent of \$700.00 to \$850.00, as there is no written notice, the allowable amount for 2016 is 2.9% of \$700.00, for 2017 is 3.7% of \$700.00 and for 2018 is 4.0% of \$700.00.

Conclusion

The tenant's application seeking cancellation of the Notice and an order requiring the landlord to comply with her obligations under the Act has been granted.

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: June 25, 2019

Residential Tenancy Branch