



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on November 16, 2020, wherein the Tenants sought to cancel a 1 Month Notice to End Tenancy for Cause issued on October 31, 2020 (the "Notice").

The hearing of the Tenants' Application was scheduled for 11:00 a.m. on February 1, 2021. Only the Landlord and the owner, S.B. called into the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and Owner and I were the only ones who had called into this teleconference.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

This tenancy began June 1, 2013. Monthly rent is \$430.00 and the Tenants paid a \$215.00 security deposit.

A copy of the Notice was provided in evidence before me.

The following boxes were checked off on the Notice:

- the Tenant or a person permitted on the residential property by the Tenant has
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to have adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

The Notice was prepared on a form from 2011 which did not provide any details of cause, save and except for the general boxes checked off by the Landlord.

The Landlord stated that the reason they wished to end the tenancy was due to the fire hazard created by the Tenants' hoarding behaviour.

Analysis

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord presented their evidence first.

Further, although in the normal course, a tenant's Application is dismissed when they fail to call into the hearing of their Application, the validity of a notice to end tenancy remains an issue to be addressed when a Tenant's Application to cancel such a notice is brought. This is because a landlord may claim an order of possession pursuant to section 55 of the *Act* in the event a tenant's request to cancel a notice is dismissed.

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy. In all cases a Notice to end tenancy must comply with section 52 of the *Act*. For clarity I reproduce section 52 of the *Act* as follows:

Form and content of notice to end tenancy

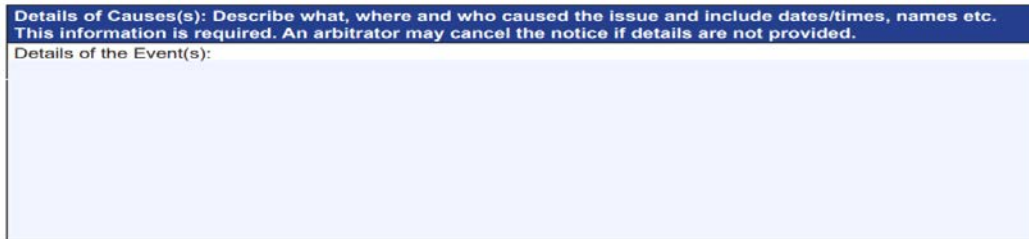
52 In order to be effective, a notice to end a tenancy must be in writing and must

- (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, and
- (e) when given by a landlord, be in the approved form.

The “approved form” as referenced in section 52(e) is #RTB-33 and which can be found online at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb33.pdf>

In the case before me the Landlord issued an #RTB-33 form from 2011. This version did not include a section for “Details of Cause”. This form was replaced by subsequent versions to include a section for landlords to provide further details as to the reason they wish to end the tenancy. On the current form, #RTB-33, the landlord is also informed that the Notice may be cancelled if details are not described. For clarity, I provide a screen shot of that section:



Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

In the case before me the outdated form did not allow for any such details.

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them, the opportunity to review and respond to any evidence which is to be relied upon by the claiming party, and to be present at any hearings dealing with the issues so that they may meaningfully respond to the allegations made against them.

A landlord seeking to end a tenancy for cause, is required to give the tenant sufficient details of the cause on the notice to end tenancy so that the tenant knows the reasons the landlord wishes to end their tenancy and is able to respond to the specific allegations.

In this case, the Landlord failed to provide any such details to the Tenants. Consequently, I find the Notice is ineffective and should be cancelled. The Tenants' request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

The Tenants' request to cancel the Notice is granted. The tenancy shall continue 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: February 01, 2021

Residential Tenancy Branch