



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OLC, MNDCT, RP, RR, LRE, PSF, LRE

Introduction

On August 6, 2021, the Tenant made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a repair Order pursuant to Section 65 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking to set condition on the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking a provision of services or facilities pursuant to Section 62 of the *Act*.

On November 18, 2021, the Tenant amended her Application to increase the amount of compensation sought pursuant to Section 67 of the *Act* and seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to Section 46 of the *Act*.

On August 13, 2021, the Tenant made an additional Application for a Dispute Resolution Proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “*Notice*”) pursuant to Section 47 of the *Act*, again seeking an Order to comply pursuant to Section 62 of the *Act*, and again seeking to set conditions on the Landlord’s right to enter pursuant to Section 70 of the *Act*.

This Application was originally set down for a hearing on December 20, 2021 at 11:00 AM but was subsequently adjourned for reasons set forth in the Interim Decision dated December 21, 2021. This Application was then set down for a final, reconvened hearing on January 24, 2022 at 9:30 AM.

The Tenant attended the hearing. The Landlord attended the hearing as well, with P.T. attending in a support role for the Landlord; however, she would not be making any submissions. At the outset of the hearing, I explained to the parties that as the hearing

was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of P.T., provided a solemn affirmation.

At the original hearing, service of the Tenant's Notice of Hearing, Amendment, and evidence packages was confirmed and only the Tenant's documentary evidence was accepted and considered when rendering this Decision. As well, the Landlord's documentary evidence was accepted and considered when rendering this Decision.

In addition, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the notices to end tenancy, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notices cancelled?
- If the Tenant is unsuccessful in cancelling the Notices, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 11, 2020, that rent was established at \$1,00.00 per month, and that it was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenant by being posted to the Tenant's door on September 2, 2021. However, when reviewing this Notice, as it was not signed and an effective date to end tenancy was not noted, this notice does not comply with Section 52 of the *Act* with respect to form and content. As such, this notice is cancelled and of no force or effect.

They then agreed that a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenant by being posted to the Tenant's door on November 2, 2021. However, the Landlord confirmed that she never gave the Tenant a written demand for the outstanding utilities, which is required under Section 46 of the *Act*, before this notice could be served for utilities owing. As such, this notice is cancelled and of no force or effect.

They acknowledged that a third 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenant by being posted to the Tenant's door on December 2, 2021. However, the Landlord again confirmed that she never gave the Tenant a written demand for the outstanding utilities prior to serving the notice. As such, and similar to above, this notice is also cancelled and of no force or effect.

Finally, they agreed that the One Month Notice to End Tenancy for Cause was served by being posted to the Tenant's door on August 13, 2021. The reasons the Landlord served the Notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
- 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/property/park.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The effective end date of the tenancy was noted as September 12, 2021, which is incorrect based on Section 47 of the *Act*. As well, the Tenant's last name was spelled incorrectly on the Notice and the Landlord's signature was not on her copy of the Notice. The Tenant confirmed that she understood the Notice was for her despite her name being spelled incorrectly. As well, the Tenant submitted a copy of this Notice with the Landlord's signature on it. As per Section 68 of the *Act*, I find it appropriate to amend the Notice to correct these deficiencies. Consequently, I find that this is a valid Notice.

The Landlord made her submissions with respect to the reasons why the Notice was served. She referenced her documentary evidence which she claimed supported her position for why the Notice was served. The Tenant made her submissions refuting the Landlord's allegations and cited her own documentary evidence which she believes supports her position.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

As noted above, the three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities of September 2, November 2, and December 2, 2021, are cancelled and of no force or effect.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of

Section 52 of the *Act*. Given that the Tenant understood that this Notice was for her despite the name being spelled incorrectly, I have amended the Notice to correct this pursuant to Section 68 of the *Act*. Consequently, I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) put the landlord's property at significant risk;*

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(h) the tenant

- (i) has failed to comply with a material term, and*
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties'

testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Given that the burden of proof is on the Landlord to substantiate the reasons for service of the Notice, I find it important to note that the Landlord served three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities that were all cancelled because the Landlord erred in one form or another, and these were all determined to be invalid. Moreover, the Landlord incorrectly spelled the name of the Tenant on the Notice and noted an incorrect effective end date to the tenancy.

In combination with the deficiencies in the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities and the Landlord's vague and varying testimony during the hearings, I am not satisfied that the Landlord's submissions were credible or reliable. Moreover, the Landlord served a warning letter to the Tenant, after she served the Notice, for some of the issues that she brought up during the hearings. I do not find it reasonable that the Landlord could first serve a Notice to end the tenancy, then inform the Tenant of the problems with a warning letter, and hope to end the tenancy for these reasons after the Notice had already been served.

Considered in its totality, I find that the Landlord has provided little reliable or persuasive testimony that is consistent with her documentary evidence, especially when the Tenant has provided testimony and evidence that contradicts the Landlord's. As such, I am not satisfied that the Landlord has met the burden to justify the grounds for serving the Notice, on a balance of probabilities.

Having said that, it is clear that there is a contentious relationship between the parties, and it would not surprise me, based on the testimony and the evidence of the Tenant, that the Tenant is also acting in a manner that is detrimental to her tenancy. I find that both parties are at fault and are likely responsible for creating issues unnecessarily due to their personality differences, which has led to miscommunication, misunderstandings, and friction between them. The parties are encouraged to attempt to find a manner with which they can move forward in this tenancy in a more positive manner.

While the Landlord has provided insufficient evidence to support an end to the tenancy based on the Notice, the Tenant is cautioned that any future inappropriate conduct or behaviour may result in a jeopardization of the tenancy.

Regardless, as I am not satisfied of the validity of the Notice, I find that the Notice of August 13, 2021 is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities of September 2, November 2, and December 2, 2021, are cancelled and of no force or effect.

In addition, the One Month Notice to End Tenancy for Cause of August 13, 2021 is also cancelled and of no force or effect.

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: January 26, 2022

Residential Tenancy Branch