



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, LRE

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed on March 1, 2022 (the “One-Month Notice”);
- An order pursuant to s. 70 restricting the Landlord’s access to the rental unit; and
- Return of his filing fee pursuant to s. 72.

A.B. appeared as the Tenant. R.S. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the One-Month Notice was personally served on the Tenant on March 1, 2022. The Tenant acknowledges receiving the One-Month Notice on March 1, 2022. I find that the Landlord served the One-Month Notice in accordance with s. 88 of the *Act* and was received by the Tenant on March 1, 2022 as acknowledged by him at the hearing.

The Tenant advised that he served the Notice of Dispute Resolution and his evidence in two packages: the first being the Notice of Dispute Resolution personally delivered to the Landlord’s office on March 24, 2022 and the second being evidence submissions sent to the Landlord via registered mail on June 3, 2022. The Landlord acknowledges receipt of the Tenant’s application materials and raised no objections with respect to service. Pursuant to s. 71(2) of the *Act*, I find that the Landlord was sufficiently served with the Tenant’s application materials based on its acknowledged receipt.

The Landlord indicates that his response evidence was served on the Tenant via registered mail and the Tenant acknowledged its receipt. Pursuant to s. 71(2) of the *Act*, I find that the Tenant was sufficiently served with the Landlord's response evidence based on its acknowledged receipt.

Preliminary Issue – Tenant's Claim

Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised that the primary issue in the application related to the enforceability of the One-Month Notice. The Tenant's claim restricting the Landlord's access to the rental unit is secondary to whether the tenancy will end due to the One-Month Notice. I further advised if there was sufficient time, I would hear submissions on this aspect, though I wished to primarily focus on the parties' submissions with respect to the One-Month Notice.

The time allotted proved insufficient and only submission with respect to the One-Month Notice were canvassed. Accordingly, I dismiss the Tenant's claim under s. 70 pursuant to Rule 2.3 as it was not sufficiently related to the One-Month Notice. If the One-Month Notice is cancelled and the tenancy continues, it will be dismissed with leave to reapply. If the tenancy ends based on the One-Month Notice, it will be dismissed without leave to reapply.

The hearing dealt with the sole of issue of the enforceability of the One-Month Notice.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in January 2008, though the current Landlord began acting in that capacity in 2016 after obtaining ownership of the property.
- Rent of \$1,900.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$875.00 in trust for the Tenant.

A copy of the tenancy agreement signed in 2016 was put into evidence by the parties. The parties confirmed the rental unit address as listed in the tenancy agreement.

The Landlord advised that the rental unit is a single detached home in which there are two rental units: the subject main floor rental unit and a basement suite. The tenancy agreement shows that the rental unit is the main floor at the residential property.

The One-Month Notice was issued on the following bases:

- that the Tenant assigned or sublet the rental unit without the Landlord's knowledge or consent; and
- due to the Tenant or a person permitted on the property by the Tenant seriously jeopardized the health, safety, or lawful right of another occupant or the Landlord.

The Landlord indicates that the Tenant's son rented the basement suite without his knowledge or consent. A copy of a tenancy agreement with J.K. was put into evidence by the Landlord. That tenancy agreement lists the address for the rental unit, specifies the rental unit is unit 2, and lists D.B. as the landlord. I am told by the parties that D.B. is the Tenant's son.

The Tenant indicates that the residential property was previously owned by the Landlord's father and that he was working for the Landlord's father as his agent since 2015. The Tenant further indicated that he acted as the Landlord's agent since 2016. The Tenant testified that he helped the Landlord find tenants for the basement, would

conduct showings, would collect rent from the basement tenants, would remit rent to the Landlord, and would conduct maintenance as needed.

The Landlord denies this arrangement and indicates that he has been involved in the property's management as the landlord since taking the property on in 2016. The Landlord says he conducts the showings and that he has signed the previous tenancy agreements with the basement tenants.

I am directed by the Tenant to the tenancy agreement with the basement's previous tenant, C.R., which was signed in May 2019. The Tenant says he looked after the tenancy with C.R. on behalf of the Landlord. The tenancy agreement with C.R. shows the Landlord had signed it and lists the Landlord as the landlord.

The Landlord states that he never received notice from C.R. that she would be vacating the basement suite, nor did he receive notice from the Tenant or his son that they were looking for a new tenant, had found a new tenant, or otherwise. The Landlord says he manages multiple properties and that the rent paid between C.R. and J.K. was the same. The Landlord indicates he only learnt that J.K. was the tenant in February 2022 after being contacted by her. The only thing he noticed was that the son, D.B., was sending the money to him rather than receiving it directly from C.R., whom he believed to be the tenant in the basement.

The Tenant emphasized that he was acting on behalf of the Landlord as per the prior arrangement. The Tenant says the arrangement was oral and could not point me to any document or correspondence in which he notified the Landlord of the new basement tenant in the fall of 2021.

The Landlord further advised that J.K. raised allegations of unreasonable disturbances caused by the Tenant's son, D.B.. The Landlord provided no specifics with respect to the nature of the allegations, though referred me to a dispute filed by J.K. against the Tenant's son. The Tenant provides a copy of the decision with respect to that matter and indicates that J.K.'s claim had been dismissed by the Residential Tenancy Branch.

Analysis

The Tenant applies to cancel the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord.

Section 47(3) of the *Act* requires a notice issued under s. 47 to comply the form and content for notices to end tenancy set by s. 52. Section 52 states the following:

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.

(Underlined Added)

I have reviewed the One-Month Notice and the tenancy agreement provided by the parties. At the hearing, the parties confirmed the rental unit address as listed in the tenancy agreement. The address in the One-Month Notice for the rental unit is completely different than that listed in the tenancy agreement. The One-Month Notice shows a different address number, lists a different street, and has a different postal code. No explanation was provided by the Landlord why the address for the rental unit in the One-Month Notice is different than the one listed in the tenancy agreement.

I find that the One-Month Notice does not comply with the formal requirements of s. 52 of the *Act*, specifically that it does not list the address for the rental unit as required by s. 52(b). It is not a simple typographical error. The One-Month Notice lists a completely different property. It would not be reasonable to exercise my discretion under s. 68 to correct the One-Month Notice given that it lists a completely different property listed as the rental unit.

On the basis that the One-Month Notice does not comply with s. 52 of the *Act*, I find that it is not a proper notice under s. 47 as required by s. 47(3). Accordingly, the One-Month Notice is of no force or effect. I grant the Tenant's application and to the extent that the One-Month Notice is a notice to end tenancy under the *Act*, it is cancelled. The tenancy shall continue until it is ended in accordance with the *Act*.

I make no findings with respect to the parties' submissions pertaining to the Landlord's reasons for issuing the One-Month Notice and grant the Tenant's application solely on the technical deficiency of the One-Month Notice as explained above.

Conclusion

The One-Month Notice does not comply with the form and content requirements of s. 52. The One-Month Notice is not a proper notice under s. 47 and is of no force or effect. The Tenant's application is granted and the One-Month Notice is cancelled. The tenancy shall continue until it is ended in accordance with the *Act*.

As the tenancy did not end, the Tenant's claim under s. 70 of the *Act*, which was severed pursuant to Rule 2.3, is dismissed with leave to reapply.

As the Tenant was successful, I find that he is entitled to the return of his filing fee. I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenant's \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Tenant withhold \$100.00 from rent on one occasion in full satisfaction of his 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 *Residential Tenancy Act*.

Dated: June 24, 2022

Residential Tenancy Branch