



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, CNR**

OPC, MNRL, MNDL, FFL

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”).

The tenant applied for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55.

The landlord applied for:

- An order of possession for cause pursuant to sections 47 and 55;
- A monetary order for unpaid rent pursuant to sections 26 and 67;
- A monetary order for damages caused by the tenant or the tenant’s guests pursuant to sections 7 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord did not attend this hearing scheduled for 11:00 a.m. although I left the teleconference connection open throughout the hearing which concluded at approximately 11:30 a.m. 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 tenant and I were the only ones who had called into this teleconference.

The tenant attended the hearing, accompanied by a support worker, DF. The tenant testified that she sent the landlord the Notice of Dispute Resolution Proceedings package via registered mail on June 15, 2022, and provided a tracking number,

recorded on the cover page of this decision. The tenant testified she sent a copy of the amendment filed on August 4, 2022 to the landlord via registered mail and provided the tracking number for that mailing, as well. I deem the landlord sufficiently served with the tenant's application for dispute resolution and amendment five days after being sent via registered mail pursuant to sections 89 and 90 of the Act.

This hearing proceeded in the absence of the landlord in accordance with Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issues

The tenant testified that the second named applicant in her application for dispute resolution is her son who did not sign a tenancy agreement with the landlord. I find this person is not a tenant, but an occupant. This person does not possess the right to bring on an application for dispute resolution against the landlord and I have removed him from the list of parties on the cover page of this decision.

Rules 7.3 and 7.4 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The landlord did not attend this hearing to present evidence regarding the merits of his application. Consequently, I dismiss the landlord's application without leave to reapply. The tenant attended the hearing, and I heard the merits of her application seeking to dispute the landlord's notice to end tenancy for unpaid rent and notice to end tenancy for cause.

Issue(s) to be Decided

Should the notice to end tenancy for unpaid rent be upheld or cancelled?

Should the notice to end tenancy for cause be upheld or cancelled?

Background and Evidence

The tenant gave the following testimony. She was served with a 1 Month Notice to End Tenancy for Cause via email. The email is dated May 25, 2022, and the tenant's application for dispute resolution indicates she filed her application to dispute it six days later, on June 1, 2022.

The tenant has denied each of the reasons for ending the tenancy as proposed by the landlord in his notice. The landlord did not attend the hearing to provide any evidence regarding those reasons for ending the tenancy.

The tenant testified she was sent a copy of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on July 26, 2022 via email. The tenant does not acknowledge receiving it on July 26th, but testified she only checked her email 3 or 4 days later. The tenant testified that there is an error in the notice to end tenancy, as the date signed shows the date of August 16, 2022 and the effective date is August 06, 2022. The tenant received the August notice to end tenancy for unpaid rent in July, 2022.

The tenant's advocate testified that the tenant's rent is paid through his organization and provided a spreadsheet indicating rent in the amount of \$1,000.00 was diligently paid on the first of each month by his organization by cheque up until September, 2021. Commencing October 01, 2021, the landlord was paid on the first of each month via electronic fund transfer.

Analysis

The onus to prove the reasons they wish to end a tenancy falls upon the landlord when a tenant applies to cancel a notice to end tenancy, pursuant to rule 6.6 of the Residential Tenancy Branch Rules of Procedure. The landlord did not attend this hearing to present any evidence to support his reasons for ending the tenancy as required under rule 7.4 of the Rules of Procedure. I find insufficient evidence to uphold the landlord's notice to end tenancy for cause issued under section 47 of the Act and I cancel this notice.

With respect to the notice to end tenancy for unpaid rent, I accept the tenant's uncontested testimony that she received the notice to end tenancy on July 30, 2022, four days after it was sent to her on July 26th. The tenant filed her amendment seeking to dispute this notice to end tenancy the fifth day after receiving it, on August 4, 2022, in accordance with section 46 of the Act. The tenant and her support worker provided undisputed testimony together with corroborative proof by means of a spreadsheet to

indicate rent was being paid on time, in full since the beginning of the tenancy. Further, section 46(2) states that a notice under this section must comply with section 52 [form and content of notice to end tenancy]. Section 52 of the Act 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.

I examined the landlord's notice to end tenancy form issued under section 46 and I find the landlord provided an incorrect date signed, an incorrect effective (move-out) date and neglected to provide a landlord name and phone number on the form. The landlord's notice to end tenancy for unpaid rent is not upheld and I cancel this notice.

The remainder of the landlord's application for dispute resolution is dismissed without leave to reapply pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Conclusion

The landlord's application is dismissed without leave to reapply.

The notice to end tenancy for cause and the notice to end tenancy for unpaid rent are both cancelled and of no further force or effect. This tenancy shall continue until it is 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: October 13, 2022