



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for March 27, 2023. The hearing was adjourned to allow the landlord time to respond to the tenants' application.

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord was represented by their agent, LJ, and their legal counsel, NS. Both parties attended the hearing and were given a full opportunity to be heard.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Both parties confirmed that they are not disputing that the tenancy exists on Treaty Lands, and that the *Residential Tenancy Act* applies to this tenancy. As per section 10.8 of the *First Nations Government Housing Authority Act*, "For certainty but subject to this Act, the Residential Tenancy Act (British Columbia) applies to Ka:'yu:'k't'h'/Che:k'tles7et'h' housing and the tenancy agreement." I therefore find that I have jurisdiction to hear this matter, and that the *Residential Tenancy Act* applies to this matter.

Preliminary Issue: Were the Tenants Served with a Valid 1 Month Notice?

The tenants confirmed receipt of a letter dated November 1, 2022, which was served to the tenants in person on the same date. The letter was to inform the tenants that the landlord had decided to terminate the tenants' tenancy effective 30 days from the date of the letter for the reasons provided in the letter.

Counsel for the landlord confirmed that the landlord was requesting an Order of Possession pursuant to section 47(1) of the *Act*. Counsel argued that although the landlord did not serve the tenants with a Notice to End Tenancy for Cause using the standard 1 Month Notice to End Tenancy form, the letter still contained the required information and was not meant to mislead.

Section 52 of the *Act* provides the following requirements for form and content of a 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.

Counsel for the landlord referenced RTB Policy Guideline #18, which states the following about the use of forms:

“Using a form that is not approved by the director may be valid if it contains the required information and is not intended to mislead.

If an application is made on an old form, an arbitrator may amend the form or accept the application as validly filed. The arbitrator may refuse to amend the current form if a respondent proves prejudice that is attributable to the use of the old form.”

I note that the purpose of the RTB Policy Guideline #18 is stated at the top:

“This guideline addresses when an arbitrator may issue an order based upon a previous form and when an arbitrator may not accept an older version and require a landlord to serve a notice in the current form.”

The note that the form and content requirements of section 52 of the *Act* applies to all Notices to End Tenancy issued in accordance with the *Act*. The purpose of RTB Policy Guideline #18 is to address a situation when the landlord uses an older version of an RTB approved form, and does not relieve the landlord of their obligations to use an approved form.

I do note how that this tenancy is also governed by the *First Nations Government Housing Authority Act* as well as the *Rental Housing Regulation*, both of which did not contain any contradictory legislation about the form that must be used. Accordingly, I find that that the letter dated November 1, 2022 that was served on the tenants does not meet the form and content requirements as set out in the *Act*, and is therefore not valid.

As the landlord has not served the tenants with a proper 1 Month Notice to End Tenancy for Cause, I cannot issue an Order of Possession pursuant to section 55 of the *Act*. I order that the tenancy continue until ended in accordance with the *Act* and any applicable legislation.

As the tenants were successful with their application, I allow the tenants to recover the filing fee.

Conclusion

I find that the letter issued on November 1, 2022 does not meet the form and content requirements as set out in section 52 of the *Act*, and is therefore not a valid. I order that the tenancy continue until ended in accordance with the *Act* and any applicable legislation.

I allow the tenants to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 14, 2023