Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

The Tenant files an application seeking an order pursuant to s. 47 of the *Residential Tenancy Act* (the "*Act*") cancelling a One-Month Notice to End Tenancy signed on January 31, 2023 (the "One-Month Notice").

H.J. appeared as the Tenant. B.A. appeared as the Tenant's support worker. B.P. appeared as the Landlord's agent.

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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised having personally served her application and evidence on the Landlord's agent, which the Landlord's agent acknowledged having received. I find that pursuant the Tenant's application materials were served in accordance with s. 89 of the *Act*.

Preliminary Issue – Separate Application Filed by the Tenant and Withdrawal of the One-Month Notice

I was advised by the Landlord's agent that the Tenant had filed a separate application and was provided with a file number by him, which is noted on the cover page of this decision. The Landlord's agent tells me that the other matter is scheduled for hearing tomorrow and emphasized that it was the hearing tomorrow where the One-Month Notice would be adjudicated. I am told by the Landlord's agent that today's hearing is about disputing a rent increase. I advised the Landlord's agent that this was not the

case and that the question of whether the One-Month Notice was enforceable or not was before me.

When the Landlord's agent became aware of this, he intimated that he would deal with the One-Month Notice tomorrow at that hearing. I made clear that this would not be the case. To be clear, Rule 2.2 of the Rules of Procedure limits claims to what is stated in the application. Today's hearing is about an application disputing the One-Month Notice. Tomorrow's hearing is about an application disputing a rent increase.

Matters may be joined under Rule 2.10, but to do so would require the remedies in both applications to be similar to one another. There is nothing similar between whether a One-Month Notice is enforceable and whether a rent increase was properly imposed such that it is inappropriate to join the applications.

Upon my explaining this to the Landlord's agent, I canvassed whether it would be appropriate to adjourn the hearing as the Landlord did not appear to be prepared for this hearing. The Tenant resisted the adjournment saying that she has had a great deal of stress waiting for this matter to be dealt with. The Landlord's agent, though initially wishing for an adjournment, later recanted, and advised he was prepared to proceed today with the application. Given this, the hearing continued and no adjournment was granted.

I proceeded to canvass questions of service with the Landlord's agent. The Landlord's agent says that the Landlord's evidence was uploaded to the other file but had been served on the Tenant. The Tenant advised that she had not been served with any evidence. The Landlord's agent says that the Landlord's evidence comprised of letters and notices previously provided to the Tenant through the course of the tenancy but could not verify the timing and method of service for this hearing.

To be clear, I have no issue pulling the Landlord's evidence from the other file, provided it was served on the Tenant. I accept that the Landlord had uploaded its evidence to the other file due to confusion between both applications. However, the Tenant has the right to know the evidence the Landlord intends to rely on at the hearing such that she can review it and prepare.

In this instance, it does not appear that the Landlord served its evidence on the Tenant. Though some of these documents may have been posted at various times during the tenancy, the Landlord, as a respondent, has an obligation under Rule 3.15 to serve the

evidence it intends to rely upon on the Tenant. It would be procedurally unfair, in my view, to review and rely on evidence provided to the Residential Tenancy Branch which was not also served on the Tenant. As such, I find the Landlord did not serve its evidence in accordance with the Rules of Procedure or the *Act*.

I then canvassed whether the One-Month Notice was served on the Tenant. The Landlord's agent appeared to have a level of misapprehension on whether the One-Month Notice had been served or not, emphasizing that a separate notice to end tenancy dated March 1, 2023 had been served. To confirm the notices were the same, I read the One-Month Notice provided to me by the Tenant to him.

I pointed out to the Landlord's agent that the Tenant filed to dispute the One-Month Notice, signed January 31, 2023, such that it is strange that the Landlord did not serve it. Rather than resolve the issue of whether the One-Month Notice had been served, the Landlord's agent advised that the One-Month Notice would be withdrawn. I confirmed with him that the Landlord was doing so.

As the Landlord's agent has withdrawn the One-Month Notice, I find that it is no longer enforceable. The tenancy shall continue until it is ended in accordance with the *Act*. I make no findings on the substantive issues raised by the One-Month Notice as it would be moot to do so since the Landlord withdrew it at the hearing.

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: May 29, 2023

Residential Tenancy Branch