



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, O, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 31, 2016 ("2 Month Notice"), pursuant to section 49;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant exited the teleconference first, so that I could obtain the landlord's contact information for the purposes of sending my decision, confidentially, as per the landlord's request. I advised both parties that I could not hear further evidence after the tenant exited the conference. After the tenant exited the conference, the landlord sought legal advice asking me what reasons she should have indicated in her 2 Month Notice, in order to be successful. I notified the landlord that I could not provide her with legal advice and that she should consult a lawyer in order to obtain same. The landlord also asked me what the statistics were for cases where tenants were successful in these types of hearings and I notified her that I did not have any statistics to share with her. The landlord then exited the conference after providing me with her contact information.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application. The landlord confirmed that she was aware that the tenant was disputing her 2 Month Notice at this hearing, despite the fact that she and I had not received a copy of the second page of the tenant's Application. The landlord confirmed that she became aware during the hearing that the tenant was also seeking to recover the \$100.00 filing fee for his Application. The

landlord confirmed that she was ready to proceed with this hearing based on the tenant's entire Application. Accordingly, I proceeded with the hearing based on the landlord's consent.

The tenant confirmed personal receipt of the landlord's 2 Month Notice on May 31, 2016, which the landlord confirmed she served on the above date. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on May 31, 2016.

The tenant confirmed that he had applied for "other" unspecified remedies in error and did not wish to pursue that claim at this hearing. Accordingly, this portion of his Application is dismissed without leave to reapply.

Issues to be Decided

Should the landlord's 2 Month Notice to be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on September 1, 2015. Monthly rent in the amount of \$775.00 is payable on the first day of each month. A security deposit of \$387.50 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a copy of a written tenancy agreement but a copy was not provided for this hearing. The tenant continues to reside in the rental unit.

The 2 Month Notice, which has an effective move-out date of July 31, 2016, indicates the following reason for ending this tenancy:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the*

purchaser or a close family member intends in good faith to occupy the rental unit.

Analysis

I find that the tenant filed his Application to dispute the landlord's 2 Month Notice within 15 days of receiving it on May 31, 2016, as per section 49(8) of the *Act*. The tenant filed his Application on June 6, 2016. Therefore, as I have found that the tenant applied to dispute the notice in time, the burden of proof, on a balance of probabilities, falls upon the landlord to justify the reason indicated in the 2 Month Notice.

As per sections 49(5)(b) and (c) of the *Act*, the landlord may only issue a 2 Month Notice for a valid reason, once "all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy..." At the hearing, the landlord testified that she accepted an offer from a purchaser to buy her property on June 13, 2016, and signed a purchase agreement with removal of all subjects on June 20, 2016. She said that she received written notice from the purchaser to move into the unit on June 20, 2016 and that the purchaser will take possession on July 29, 2016. As the landlord did not have the conditions for sale satisfied with written notice from the purchaser to move in at the time of issuing the notice on May 31, 2016, I find that she has failed to abide by sections 49(5)(b) and (c) of the *Act*.

On a balance of probabilities and for the reasons stated above, I allow the tenant's Application to cancel the landlord's 2 Month Notice, dated May 31, 2016. The landlord is not entitled to an order of possession based on the 2 Month Notice.

The landlord's 2 Month Notice, dated May 31, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. I advised both parties of my decision verbally during the hearing.

As the tenant was successful in this Application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

The landlord claimed that the tenant had not paid rent for this rental unit. I notified both parties that I did not have any applications before me relating to rent, and therefore, I could not deal with her claim.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice, dated May 31, 2016, is allowed. The landlord is not entitled to an order of possession based on the 2 Month Notice.

The landlord's 2 Month Notice, dated May 31, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from a future rent payment at the rental unit in full satisfaction of the monetary award for the filing fee granted to him at this hearing.

The tenant's application for other unspecified remedies is dismissed without leave to reapply.

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: July 06, 2016

Residential Tenancy Branch