



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, 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 Property, dated October 15, 2016 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 16 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlord with the tenant's application for dispute resolution hearing package on October 24, 2016 by way of registered mail to the landlord's address for service provided on the 2 Month Notice. The tenant provided a Canada Post tracking number verbally during the hearing as well as a printout of the tracking number from the Canada Post website, indicating that the package was unclaimed and returned to sender. As per Residential Tenancy Policy Guideline 12, refusing service or failing to collect a mail package is not sufficient to avoid the deeming provisions of section 89 of the *Act*. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on October 29, 2016, five days after its registered mailing.

The tenant testified that he personally received the landlord's 2 Month Notice on October 15, 2016. The reason on the notice is "*the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)*." The effective move-out date on the notice is December 15, 2016. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on October 15, 2016.

Issues to be Decided

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

Is the tenant entitled to recover the filing fee for his application?

Analysis

In accordance with section 49(8) of the *Act*, the tenant must file his application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant received the 2 Month Notice on October 15, 2016 and filed his application on October 24, 2016. Accordingly, I find that the tenant's application was filed within the fifteen day time limit under the *Act*.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the 2 Month Notice is based. The landlord did not appear at this hearing to provide evidence. The landlord did not meet his onus of proof. Therefore, as advised to the tenant during the hearing, the landlord's 2 Month Notice, dated October 15, 2016, is cancelled and of no force or effect. This tenancy will continue until it is ended in accordance with the *Act*. As the tenant was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated October 15, 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 future rent payable to the landlord for this tenancy, in full satisfaction of the monetary award made for the 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: December 14, 2016

Residential Tenancy Branch

