



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not appear at the hearing, although I waited until 11:12 a.m. for the landlord to appear for this hearing scheduled for 11:00 a.m.

The tenant attended the hearing and was given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the Application for Dispute Resolution (the Application) and evidence to the landlord by registered mail on November 18, 2017. The tenant provided a copy of the Canada Post Tracking Number to confirm this registered mailing.

The tenant confirmed that they received the Two Month Notice on October 27, 2017. In accordance with section 88 of the *Act*, I find the tenant is duly served with the Two Month Notice.

Issue(s) to be Decided

Should the Two 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 the Application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on October 20, 2013, with a monthly rent of \$1,495.00, due on the first day of each month. The tenant testified that they paid a security deposit to the landlord in the amount of \$747.50.

A copy of the Two Month Notice was provided in evidence by the tenant.

Analysis

In this type of matter, the tenant must prove they served the landlord with the Notice of dispute resolution proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service “by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

I find that the tracking number provided by the tenant is for a package sent by Canada Post’s Xpress Post mailing, which may or may not require a signature from the individual to confirm delivery of the document to the person named as the respondent. In this case, Canada Post’s Online Tracking System shows that a signature was not required for the delivery of this Xpress Post mailing and, as such, this mailing does not meet the definition of registered mail as defined under the *Act*.

Since I find that the tenant has not served the landlord with notice of this hearing in accordance with section 89 of the *Act*, I dismiss the tenant’s application to dispute the Two Month Notice with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Pursuant to section 55 of the *Act*, if I dismiss the tenant’s application to cancel a notice to end tenancy, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

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,...and*

(e) when given by a landlord, be in the approved form...

I find the Two Month Notice is not signed or dated by the landlord and does not comply with the provisions of section 52(e) of the *Act*. For this reason I find that the Two Month Notice is not a valid notice to end tenancy and it is set aside.

This tenancy will continue until ended in accordance with the *Act*.

As I have found the tenant did not serve the landlord in accordance with section 89 of the *Act*, I dismiss the tenant's request to recover the filing fee from the landlord, without leave to reapply.

Conclusion

The Two Month Notice that was received by the tenant on October 27, 2017, is cancelled and of no force or effect.

This tenancy continues until 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: January 26, 2018

Residential Tenancy Branch