



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), an order for the Landlord to comply with the Act, regulation, or tenancy agreement, and recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, and the agent for the Landlord (the “Agent”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mail to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

The Applicant submitted an Amendment to an Application for Dispute Resolution (the “Amendment”) on January 26, 2018, stating that they received a new notice to end tenancy on January 20, 2018, which they wished to dispute. Attached to the Amendment was a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”). The Tenant testified that the Amendment was sent to the Landlord by registered mail on January 27, 2018, and provided the registered mail tracking number. The Landlord confirmed receipt of the Amendment and the Application was amended accordingly.

Preliminary Matter #2

The Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel both a One Month Notice and a Two Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As a result, I find that the Tenant’s claim for an order for the Landlord to comply with the *Act*, regulation or tenancy agreement is not sufficiently related to whether the tenancy will end and I exercise my discretion to dismiss this claim with leave to re-apply.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Is the Tenant entitled to an order cancelling the Two Month Notice?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

If the Tenant is not successful in cancelling either the One Month Notice or the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that a tenancy exists between the Tenant and the Landlord which is covered by the *Act*.

The Tenant testified that on January 4, 2018, they were personally served with a blank One Month Notice and therefore do not know the reason for which the Landlord is seeking to end the tenancy. Only the first page of the One Month Notice was submitted for my consideration and is entirely blank except for a mark in the box indicating that the notice applies to a rental unit under the *Residential Tenancy Act*. The Landlord and Agent acknowledged that the form was not completed properly and stated that this is the reason they subsequently served the Two Month Notice.

The Landlord and Agent testified that the real estate agent in charge of managing the property was supposed to use the rent collected from the Tenant to pay the mortgage but when they failed to do so, the property went into foreclosure. The Agent and Landlord stated that the property was subsequently sold and that the new owner has requested that the Tenant be served with a Two Month Notice as they intend to occupy the property. The Agent and Landlord submitted several court documents in relation to the foreclosure but no other documentary evidence was submitted by them for my consideration.

The Two Month Notice in the documentary evidence before me, dated January 16, 2018, has an effective vacancy date of March 31, 2018, and states that the reason for ending the tenancy is because all of the conditions for the 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.

The Tenant acknowledged receiving the Two Month Notice on January 20, 2018, but stated that he has not been provided with any evidence that the conditions for the sale of the rental unit have been satisfied or that the purchaser has asked the Landlord, in writing, to give the Two Month Notice.

Analysis

I have reviewed the documentary evidence and testimony before me for consideration and I find that the Tenant was served the One Month Notice on January 4, 2018, and the Two Month Notice on January 20, 2018.

The ending of a tenancy is a serious matter and when a tenant disputes a notice to end tenancy, the landlord bears the onus to demonstrate that they had cause under the *Act* to serve the notice and to end the tenancy.

Section 52 of the *Act* states the following regarding the form and content requirements for a notice to end tenancy:

Form and content of 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.

As the One Month Notice in the documentary evidence before me is blank, I find that it does not meet the form and content requirements set out under section 52 of the *Act*. Section 68 of the *Act* states that I may amend a notice to end tenancy that does not comply with section 52 of the *Act*, provided I am satisfied that the person receiving the notice knew, or ought to have known, the information that was omitted from the notice and in the circumstances, it is reasonable to do so. Based on the testimony of the Tenant and the fact that the One Month Notice before me for consideration is blank, I do not find it reasonable to conclude that the Tenant knew or ought to have known all of the information that was to be included in the One Month Notice. As a result, I do not find it reasonable to amend the One Month Notice in these circumstances.

Based on the above, I find that the One Month Notice is not valid as it does not comply with section 52 of the *Act* and I therefore order that it be cancelled and of no force or effect.

Section 49 of the *Act* states that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit, 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 on one of the following grounds:

- The purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- The purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Although the Agent and Landlord testified that the property has been sold and that the purchaser has requested that the Two Month Notice be served on the Tenant as they intend to occupy the rental unit, no documentary evidence such as the contract of purchase and sale or the written request from the purchaser was submitted for my consideration. As a result, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that they had cause pursuant to section 49 of the *Act* to serve the Two Month Notice. I therefore find the Two Month Notice is not valid and I order that it be cancelled and of no force or effect.

As the Tenant was successful in the Application, I find that they are entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. The Tenant is entitled to deduct \$100.00 from the next month's rent or otherwise recover this amount from the Landlord.

Conclusion

I order that both the One Month Notice and the Two Month Notice be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

I order that the Tenant may deduct \$100.00 from the next month's rent in recovery of the filing fee, or otherwise recover this amount from the Landlord.

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: March 12, 2018

Residential Tenancy Branch