



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant provided undisputed affirmed testimony that the notice of hearing package was served to the landlord's agent/son, N.B. in person on January 16, 2018. In support of this claim, the tenant provided photographs of the tenant handing the package to the landlord's agent. The landlord did not attend or submit any documentary evidence. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset it was clarified with the tenant regarding the amendment to the application for dispute filed on February 2, 2018, the tenant's request to cancel the 1 Month Notice dated January 31, 2018 was not served upon the landlord. As such, I find that the tenant has failed to comply with sections 88 and 89 regarding the service of an amendment to an application for dispute. The tenant's amendment is dismissed with leave to reapply. Leave to reapply is not an extension of an applicable limitation period. The hearing shall proceed on the tenant's request to cancel the 2 Month Notice.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

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

On January 2, 2018, the landlord served the tenant with the 2 Month Notice dated January 1, 2018. The 2 Month Notice sets out an effective end of tenancy date of March 2, 2018 and that it was being given as:

- 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 tenant disputes the landlord's good faith in issuing the 2 Month Notice.

Analysis

In accordance with subsection 49(8) of the Act, the tenant must file his or her application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant received the 2 Month on January 2, 2018. The tenant filed his application for dispute resolution on January 12, 2018. Accordingly, the tenant filed within the fifteen day limit provided for 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 reasons on which the 2 Month Notice is based. The landlord did not submit any evidence or appear for this hearing. The landlord did not meet his onus of proof.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then

that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The 2 Month Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

Conclusion

The tenant's application to cancel the 2 Month Notice dated January 1, 2018 is granted.

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 13, 2018

Residential Tenancy Branch