



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, OLC, LAT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) issued in May 2018 pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to change the locks to the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that she received the 2 Month Notice posted on her door by the landlord on May 10, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant also said that she received a handwritten 10 Day Notice for unpaid utilities on May 8, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*.

The tenant gave undisputed sworn testimony that they sent the landlord a copy of their dispute resolution hearing package and written evidence by registered mail on May 25, 2018. The landlord testified that they realized that the tenant's registered mail package was returned to the tenant as unclaimed. The landlord said that they learned about this hearing by contacting the Residential Tenancy Branch (the RTB). Based on the testimony from both parties and in accordance with sections 88, 89 and 90 of the *Act*, I

find that the landlord was deemed served with the above documents from the tenant on May 30, 2018, the fifth day after their registered mailing.

Issues(s) to be Decided

Should the landlord's 10 Day and 2 Month Notices be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

Background and Evidence

This month-to-month tenancy for one rental unit in a two-unit property which is used by the landlord for a hair salon commenced on February 1, 2018. Both the rental unit and the hair salon are separate units and do not share common facilities. Although there is a written Residential Tenancy Agreement, neither party supplied a copy of that Agreement as part of their evidence. Monthly rent is set at \$1,250.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$650.00 security deposit paid when this tenancy began.

The tenant entered into written evidence a copy of the handwritten 10 Day Notice, dated May 8, 2018. The landlord testified that they had checked with a representative of the RTB, who informed them that a notice to end tenancy need not be submitted on any special form, but could be handwritten.

The landlord confirmed that they had not filled in the tenant's name or address, or the landlord's name or address on the first page of the 2 Month Notice issued to the tenant in May 2018. Both parties agreed that the 2 Month Notice issued on June 16, 2018 included the information that was missing from the previous 2 Month Notice. However, the tenant testified that the landlord had failed to provide them with page 2 of that 2 Month Notice, in which the landlord was required to outline the reason for the issuance of that Notice. Both parties confirmed that the tenant knew that the 2 Month Notice was being issued for the same reason as the initial 2 Month Notice in May, which was for landlord's use of the property by a family member, in this case one of the landlord's sons.

The tenant gave undisputed sworn testimony supported by photographs and written evidence that the landlord had not provided the tenant with a mailbox key. At present, the landlord's only key is held by one of the landlord's sons who provides mail to the tenant. The landlord testified that this occurs on a regular basis. The tenant testified

that the landlord's son seldom forwards mail to the tenant, and that this ineffective process has led to problems for the tenant in failing to receive mail.

The landlord said that they were willing to let the tenant have the sole mailbox key, as long as the tenant would forward mail for the landlord and her family to the landlord as soon as it was received. The tenant agreed to this proposal.

Both parties testified that they feel threatened by the other party. Both advised that there are police reports that have been prepared as a result of their complaints about the other parties behaviours. As neither party had filed copies of these reports with the RTB, the RTB has no separate access to such reports, and these reports would have little bearing on the issues properly before me, I have given little weight to the parties' evidence in this regard.

The tenant maintained that the threatening behaviour of the landlord warranted the issuance of an order allowing the tenant to change the locks to the rental unit. The landlord gave undisputed sworn testimony that they have not accessed the rental unit without the tenant's permission and that they visit the property regularly, as the landlord runs a hair salon from the other unit in this property.

The tenant also testified that she is in the process of finding alternate accommodations, hopefully by the end of July 2018.

Analysis

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent or unpaid utilities “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.” Section 46(2) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* reads in part as follows:

- 52 *In order to be effective, a notice to end 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, and*

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

Although section 52 of the *Act* allows a tenant to issue a handwritten notice to end a tenancy, section 52(e) specifies that any notice to end tenancy issued by a landlord has to be on the approved RTB form. As this was not the case for the 10 Day Notice, I allow the tenant's application to cancel the 10 Day Notice, which has no legal effect when issued in handwriting on a non-approved document.

In contacting the RTB about this matter, it is possible that the landlord failed to note that they were a landlord seeking to end a tenancy. Had this information been clear, I am certain that the RTB staff member would have advised that the landlord's notice had to be on an approved RTB form.

I also find that the 2 Month Notice is deficient in that it was only partially completed, with no mention of the tenant's name or address, or the landlord's name or address in the first half of the first page of that Notice. As the 2 Month Notice of May 2018 does not comply with section 52 of the *Act*, I allow the tenant's application to cancel that Notice.

Although the tenant has not established that there are sufficient grounds to warrant the issuance of an order allowing the tenant to change the locks to this rental unit, I do find that the landlord is obligated to provide the tenant with a mailbox key. As an extra key is not available, I make the following orders which align with the commitments made by both parties at the hearing.

I make the following orders for this continuing tenancy:

1. I order the landlord to ensure that their son provides the mailbox key to the tenant by the end of the day on June 25, 2018.
2. I order the tenant to place on the dryer in the laundry room of this property any and all mail that is directed to either the landlord or to the landlord's family that appears in the mailbox for this rental property. This is to occur on the day it is received by the tenant.
3. I order the tenant to return the mailbox key to the landlord at the end of this tenancy.

I also instructed the landlord to undertake the following measure to ensure that no problems arise from the tenant's claim that page 2 of the recently issued 2 Month Notice was missing. In accordance with the powers delegated to me and in accordance with the objectives of the *Act*, I issue the following order to give effect to that instruction:

4. I order the landlord to provide the tenant with a copy of the missing page 2 of the 2 Month Notice issued by the landlord on June 16, 2018.

5. I order that for the purposes of this tenancy the 2 Month Notice of June 16, 2018 be considered completely served to the tenant in its entirety on the date that the landlord provides page 2 to the tenant.

Conclusion

I allow the tenant's application to cancel the 10 Day Notice and 2 Month Notice, both issued in May 2018. These notices to end tenancy are of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue the following orders:

1. I order the landlord to ensure that their son provides the mailbox key to the tenant by the end of the day on June 25, 2018.
2. I order the tenant to place on the dryer in the laundry room of this property any and all mail that is directed to either the landlord or to the landlord's family that appears in the mailbox for this rental property. This is to occur on the day it is received by the tenant.
3. I order the tenant to return the mailbox key to the landlord at the end of this tenancy.
4. I order the landlord to provide the tenant with a copy of the missing page 2 of the 2 Month Notice issued by the landlord on June 16, 2018.
5. I order that for the purposes of this tenancy the 2 Month Notice of June 16, 2018 be considered completely served to the tenant in its entirety on the date that the landlord provides page 2 to the tenant.

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: June 25, 2018

Residential Tenancy Branch