



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STORAGEVAULT CANADA INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 11, 2018 (the "Application"). The Landlord applied for an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (a "Two Month Notice"). The Landlord also sought reimbursement for the filing fee.

J.J. appeared as agent for the Landlord at the hearing. Both Tenants appeared. I explained the hearing process to the parties and nobody had questions when asked. All parties provided affirmed testimony.

Both the Landlord and the Tenants had submitted evidence prior to the hearing. The Tenants confirmed they received the hearing package and Landlord's evidence and raised no issues in this regard. J.J. confirmed she received the Tenants' evidence and raised no issues in this regard.

All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on a Two Month Notice?

Background and Evidence

Two written tenancy agreements were submitted as evidence. The first tenancy agreement was between a previous owner of the rental unit and the Tenants. It started March 1, 2017 and was for a fixed term of 12 months; however, the agreement states it ended February 28, 2017. The Tenants said this was a typographical error and should have been February 28, 2018. The second tenancy agreement is between the Landlord and Tenants. It started November 16,

2017 and is a month-to-month tenancy. Both parties agreed the second tenancy agreement is accurate.

At the outset of dealing with the Landlord's request for an Order of Possession, I asked J.J. if a Two Month Notice had been served on the Tenants as there was no such notice submitted as evidence. J.J. said a 30-day notice was served on the Tenants because the space the Landlord wants to use is not part of the tenancy agreement. I confirmed with J.J. that she was referring to a letter dated February 7, 2018, which had been submitted as evidence, as the 30-day notice.

The letter dated February 7, 2018 is addressed to the Tenants. It states that the Landlord requires an office space accessible from the rental unit for their own use effective March 7, 2018. It says the Tenants must vacate the office space by this date.

I told J.J. my view was that I had no authority to issue an Order of Possession under section 55 of the *Residential Tenancy Act* (the "*Act*") given a notice to end tenancy under section 49 of the *Act* must comply with section 52 of the *Act* which requires a notice from a landlord to be in the approved form and here no such notice has been served. I told J.J. I would hear her submissions on this issue. I understood J.J. to say she had called the Residential Tenancy Branch who told her to proceed in this way. J.J. had no further submissions on this point. I told the parties there was no need for me to obtain further details regarding the dispute as my decision would be based on the absence of a Two Month Notice.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for landlord's use of property. A notice under this section must have an effective date that is "not earlier than 2 months after the date the tenant receives the notice" pursuant to section 49(2)(a). Further, a notice under this section must comply with section 52 of the *Act*.

Section 52(e) of the *Act* requires a notice to end tenancy given by a landlord to be in the approved form.

Section 10(2) of the *Act* states, "[d]eviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used".

The approved Two Month Notice form is available on the Residential Tenancy Branch website. In addition to the basic information required in a notice to end tenancy as set out in section 52 of the *Act*, the form includes information about the following: tenant compensation for landlord's use of property; fixed-term tenancy agreements; when the notice is considered to be received by the tenant; and further information for both landlords and tenants (the "Additional Information").

I have reviewed the February 7, 2018 letter. I find the letter is not a notice to end tenancy issued under section 49 of the *Act*. The letter deviates substantially from the approved form. It

includes none of the Additional Information outlined above. The absence of this information does affect the substance of the approved form and the notice. I also note the letter gives the Tenants 30 days notice to vacate the office space which is clearly not the two months notice required by section 49(2)(a) of the *Act*.

Given the above, I find the Landlord has not served the Tenants with a Two Month Notice. Therefore, I have no authority to issue an Order of Possession under section 55 of the *Act* based on a Two Month Notice. This is what the Application requests. The Application is dismissed without leave to re-apply.

Given the Landlord was not successful in this application, I decline to award reimbursement for the filing fee.

I note that section 49 of the *Act* is likely not the appropriate section for the Landlord to proceed under in the circumstances although I make no binding decision in this regard. The parties may want to refer to section 27 of the *Act* for further information. It is of course always open to the parties to discuss this matter and settle their dispute.

At the end of the hearing, given the issues raised in the materials submitted, I told both parties they may wish to contact the Residential Tenancy Branch to obtain information on how to proceed in the circumstances and I reiterate that here.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 3, 2018

Residential Tenancy Branch