



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAV LAL HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FFT

Introduction

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

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice), pursuant to section 49 of the *Act*, and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:40 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he personally served the notice on May 29, 2018 to one of the building managers as she acts as an agent for the corporate landlord. In support of this, the tenant submitted documentary evidence to confirm that the building manager acts as an agent of the landlord and that she received the notice, as follows:

- a letter provided to him by the landlord which confirms the names of the building managers;

- a hand-written note from one of the building managers stating that she had posted the Two Month Notice on his door; and
- a signed statement from the building manager confirming she received the notice of dispute resolution package from the tenant.

Further to this, the tenant testified that he had asked the building manager to fax his notice to the landlord on his behalf. The tenant stated that within a few days he received a package containing the landlord's evidence in response to his dispute. The tenant noted that this indicated the corporate landlord had received his notice of dispute resolution.

Section 89 of the *Act* allows a tenant to serve their application for dispute resolution to a landlord "by leaving a copy with an agent of the landlord".

I find that the building manager is an agent of the landlord and that the tenant left a copy of his notice of dispute resolution proceeding with the agent of the landlord. As such, I find that the landlord was served with notice of this hearing in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Should the landlord's Two Month Notice to End Tenancy for Landlord's Use be cancelled, and if not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant stated that the landlord served him with a Two Month Notice by posting it on his door on May 17, 2018. The tenant confirmed that the notice was dated May 10, 2018 but that the notice was posted on his door and he received the notice on May 17, 2018. The tenant testified that on May 17, 2018, he received through his mail slot a hand-written note from the building manager, dated May 17, 2018 stating that she had posted a Two Month Notice on his door. The tenant submitted this note as documentary evidence in support of his testimony. The tenant also submitted the Two Month Notice into documentary evidence. The reason selected by the landlord for ending the tenancy, as stated on the form, was:

The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant filed an application to dispute the notice on May 28, 2018, which is within the time period required under section 49 of the *Act*.

Analysis

Section 49 of the *Act* contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the *Act*, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

The tenant provided undisputed testimony, supported by documentary evidence, that he received the landlord's Two Month Notice, dated May 10, 2018, posted on his door on May 17, 2018.

The landlord did not participate in the hearing and as such has failed to provide sufficient evidence to justify the cause to issue the Two Month Notice to the tenant. Accordingly, the Two Month Notice to End Tenancy dated May 17, 2018, is hereby cancelled and of no force or effect.

Further to this, due to legislative changes to the *Residential Tenancy Act* enacted on May 17, 2018, a two-month notice can no longer be used to end a tenancy for demolition, renovation or conversion on or after May 17, 2018. In accordance with the *Interpretation Act*, amendments come into force at the beginning of the day of commencement.

As the tenant was successful in his application, he may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold \$100.00 from a future rent payment on one occasion.

This tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord's notice to end the tenancy. Therefore, this tenancy shall continue until it is ended in accordance with the *Act*.

I order the tenant to withhold \$100.00 from a future rent payment on one occasion in satisfaction of the recovery of the filing fee for this application.

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: July 24, 2018

Residential Tenancy Branch