



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 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 Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant was the only one of the parties who had called into this teleconference.

As the tenant confirmed that they received the 2 Month Notice posted on their door 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 sworn testimony supported by written evidence that they sent the landlord a copy of the tenant's dispute resolution hearing package by registered mail on May 25, 2018. The tenant provided a copy of the Canada Post Tracking Number to confirm this registered mailing, noting that they had also discussed the tenant's application with the landlord after the landlord received the tenant's registered mail. I find that the landlord was deemed served with this package in accordance with sections 89 and 90 of the *Act* on May 30, 2018.

At the hearing, the tenant testified that the landlord had issued a new 2 Month Notice to the tenant, identifying August 1, 2018 as the date by which the tenant will have had to vacate the rental unit.

Issues(s) to be Decided

Should the landlord's 2 Month Notice of May 8, 2018 be cancelled? 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? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The landlord identified July 8, 2018 as the effective date of the 2 Month Notice issued to the tenant on May 8, 2018. This 2 Month Notice required the rental unit for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenant gave undisputed sworn testimony that their purpose in seeking cancellation of the 2 Month Notice was to ensure that the effective date of the 2 Month Notice would be corrected to the end of July, the earliest possible date that this tenancy could be ended on the basis of the 2 Month Notice.

Analysis

In the absence of the landlord at this hearing and based on the tenant's undisputed sworn testimony that a new 2 Month Notice has been issued to the tenant with the correct effective date cited by the landlord, I allow the tenant's application to cancel the existing 2 Month Notice of May 8, 2018, the Notice that was properly before me.

As the tenant has been successful in this application, I allow the tenant's application to recover the \$100.00 filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice of May 8, 2018 is allowed. That 2 Month Notice is of no continuing effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 05, 2018

Residential Tenancy Branch