



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, FF

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 to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package in person. The tenant claimed that the submitted documentary evidence was provided to the landlord with the notice of hearing package. The landlord disputes this stating that no documentary evidence was provided by the tenant. The landlord confirmed that no documentary evidence was provided by the landlord. I accept the undisputed affirmed testimony of both parties and find that the tenant did properly serve the landlord with the notice of hearing package in person and find that both parties have been sufficiently served as per section 90 of the Act. On the landlord's dispute of receiving the tenant's submitted documentary evidence, I find that the tenant has failed to provide sufficient evidence that the landlord was properly served as per section 88 of the Act and as such is excluded from consideration in this hearing.

Preliminary Issue

At the outset, the tenant clarified that his request for repairs (RP) was in relation to requests for specified repairs during the tenancy which the landlord has failed to make. Residential Tenancy Branch, Rules of Procedure, Rule 2.3 states that, if, in the course

of the dispute resolution proceeding , the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with our without leave to apply. As such, I find that the tenant's request for repairs are unrelated to the primary request to cancel a 2 Month Notice and is dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the 2 Month Notice?

Is the tenant entitled to recovery of the filing fee?

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.

Both parties confirmed that the landlord served the tenant with a 2 Month Notice via email on May 23, 2018. The landlord provided undisputed affirmed testimony that he did not date or sign the 2 Month Notice.

The tenant disputes the 2 Month Notice claiming that in telephone calls and text messages. The landlord has stated that he is selling the house which contradicts the stated reason for the 2 Month Notice in which his two young children will move in. The tenant also claims

Analysis

Section 49 of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

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.

Section 52 of the Act also states in part,

52 In order to be effective, a notice to end a 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.

I find based upon the landlord's undisputed affirmed evidence that the 2 Month Notice was unsigned and undated and as such, is not effective. The tenant's application to cancel the 2 Month Notice received via email on May 23, 2018 is set aside. The tenancy shall continue.

As the tenant has been successful in his application, I order that the tenant recover the \$100.00 filing fee by withholding one-time, the \$100.00 amount from the next months' rent when it is payable as of the date of this hearing.

Conclusion

The tenant's application to cancel the 2 Month Notice is granted. The 2 Month Notice served via email to the tenant on May 23, 2018 is set aside. The tenancy shall continue.

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 20, 2018

Residential Tenancy Branch