



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, PSF, FFT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- authorization to recover the 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 9:50 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 affirmed 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. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on July 26, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. I find that the landlord was deemed served with this package on July 31, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice to End Tenancy for Landlord's Use of Property and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the notice to end tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided undisputed testimony that this tenancy began on May 1, 2016 and is currently ongoing. Monthly rent in the amount of \$4,500.00 is payable on the first day of each month. A security deposit of \$2,500.00 was paid by the tenant to the landlord.

The tenant testified that sometime in July 2018 the landlord personally served him with a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of September 30, 2018 (the "Two Month Notice").

The Two Month Notice stated the following reason for ending the tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenant testified that he believed that the landlord was not acting in good faith in issuing the Two Month Notice, and that the landlord does not intend on occupying the rental unit or having the rental unit occupied by a close family member.

The tenant testified that he has a sub-tenant who rents a garage on the property. The tenant testified that he believes the landlord wants to rent the rental property in question to his sub-tenant.

Analysis

I find that the landlord served the tenant with the Two Month Notice, pursuant to section 88 of the *Act*.

Policy Guideline 2 states that good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. If the good faith intent of the landlord is called into question, the onus is on the landlord to

establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I find that the landlord has not established that he intends to either occupy the subject rental property or have it occupied by a close family member. I find that the landlord has not established that he does not have another purpose or an ulterior motive for ending the tenancy. I find that the landlord has not met the burden of proof required for the Two Month Notice to be upheld; therefore, I find that the Two Month Notice is of no force or effect.

As the tenant was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 49 of the *Act*.

Conclusion

The Two Month Notice is of no force or effect.

I issue a Monetary Order to the tenant in the amount of \$100.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: September 17, 2018

Residential Tenancy Branch