



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, LRE

Introduction

On October 26, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking suspend or restrict the Landlord's right to enter the rental unit pursuant to Section 70 of the *Act*.

The Tenant attended the hearing with P.P. as his advocate. A.D. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that he served the Landlord the Notice of Hearing package by hand around October 28, 2018 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that he did not serve his evidence to the Landlord. As such, it was not considered when rendering this decision; however, the Tenant was allowed to speak to this evidence during the hearing. The Landlord stated that he did not submit any evidence for this hearing.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, and the other claim was dismissed with leave

to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties were unsure of the start date of the tenancy but agreed that it was sometime between February and April 1, 2013 and continued as a month to month tenancy after the one-year fixed term ended. Rent was currently established at \$850.00 per month and both parties had differing testimony with respect to the day rent was due each month. A security deposit of \$425.00 was paid.

The Landlord stated that he went to the Tenant's door to serve the Notice, but he was unsuccessful, so he then emailed the Notice on October 2, 2018. He stated that he went back and posted the Notice on the Tenant's door, but he was unsure of the exact date

that he did this. The Landlord later contradictorily stated that he posted the Notice on the door first and then emailed a copy of the Notice to the Tenant later. He advised that he did not have a witness or any proof of posting the Notice on the Tenant's door.

The Tenant advised that he was only emailed the Notice on October 2, 2018 but he was never served a copy of the Notice in accordance with the *Act*. He contends that he disputed the Notice due to the fact that it was not served properly and is not a valid Notice.

The reason the Landlord served the Notice is because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The effective date of the Notice was noted as November 30, 2018.

The Tenant stated that he received a letter from the Landlord in late September advising that the Landlord was in the process of selling the house. The Landlord confirmed during the hearing that all of the conditions for the sale of the rental unit have not been satisfied and that the purchaser had not asked the Landlord, in writing, to give this Notice because they intend in good faith to occupy the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 88 of the *Act* outlines all the manners with which a document is required or permitted to be served.

When reviewing the totality of the evidence before me, I am not satisfied of the Landlord's inconsistent testimony with respect to service of the Notice. I find that his contradictory submissions regarding when he allegedly posted the Notice to the Tenant's door to be questionable and doubtful. As such, I am not satisfied on a balance of probabilities that he did serve the Notice by posting it to the Tenant's door as he alleges.

As email is not a permitted method of serving a document under the Act, I am not satisfied that the Landlord served the Notice appropriately. As such, I am also not satisfied of the validity of the Notice. Therefore, I find that the Notice of October 1, 2018 is of no force and effect.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of October 1, 2018 to be cancelled and of no force or effect.

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: December 4, 2018

Residential Tenancy Branch