



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

On December 4, 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 an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing with S.I., and also had R.H. acting as agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package in person and the Landlord confirmed receipt of this Notice of Hearing package on December 9, 2018. 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 her evidence was served to the Landlord in person on January 11, 2018 and the Landlord confirmed receipt of this. However, this evidence was not served to the Landlord in accordance with the service requirements of Rule 3.14 of the Rules of Procedure and was considered late. As such, this evidence was excluded and not considered when rendering this decision. However, the Tenant was still permitted to provide testimony with respect to this evidence.

The Landlord stated that his evidence was couriered to the Tenant and put on the Tenant's door on January 6, 2018 and the Tenant confirmed that she received this

evidence. However, the evidence submitted to the Residential Tenancy Branch was evidence that pertained to a different file and involved different parties. As this evidence was not related to the parties named in this Application, the Landlord's evidence was not considered when rendering this decision. However, the Landlord was still permitted to provide testimony with respect to this evidence.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Notice, that her other claims would be dismissed, and that the Tenant is at liberty to apply for these claims under a new and separate Application.

All parties acknowledged the evidence submitted and 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?
- Is the Tenant entitled to recovery of the filing fee?

Background, Evidence, and Analysis

Both parties agreed that the tenancy started on March 1, 2012 and rent was currently \$915.00 per month, due on the first day of each month. A security deposit of \$415.00 was paid.

Both parties agreed that the Notice was served by hand on November 21, 2018. The reason the Landlord served the Notice is because "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 effective date of the Notice was January 31, 2019.

The Tenant advised that she received the Notice and subsequently made her Application to cancel the Notice because her copy of the Notice was not signed by the Landlord and was not a valid notice that complies with Section 52 of the *Act*.

The Landlord acknowledged that he did not sign the Notice and that the copy of the Notice in front of him was not signed on the first page of the Notice as well. However, he referenced the wording on the second page of the Notice where it stated, "Complete details below at time of service (not required on landlord's copy; failure to complete does not invalidate notice)" and stated that this meant that he was not required to sign the Notice. Counsel added that the absence of a signature would not invalidate the Notice.

When the Landlord was advised that one of the requirements of Section 52 of the *Act* stipulates that a Notice must be signed to be considered an effective Notice, he then stated that he printed two copies of the Notice, that he signed one and served it on the Tenant, and that he was currently looking at his unsigned Notice in front of him. Counsel confirmed that the Landlord has a pattern of keeping unsigned notices and she also referenced a rent increase form that was unsigned as well.

As both parties' evidence was excluded, I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*. In accordance with Rule 3.19 of the Rules of Procedure, an Arbitrator may provide direction on requesting late evidence. A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property that is the subject of this dispute was requested to be provided by both parties as it is essential to the matter at hand. Both parties provided me with a copy of this Notice that is in dispute by fax after the hearing concluded.

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 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenant on November 21, 2018, I have reviewed each copy of the Notice provided to me by both parties to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. However, when I review the copy of the Notice that the Landlord submitted, there now appears to be a signature at the bottom of the Notice, and this is contrary to the Landlord's solemnly affirmed testimony that he had before him a copy of an unsigned Notice, and is also contrary to Counsel's submission that the Landlord "has a pattern of keeping unsigned notices". Combined with the Landlord's initial testimony that it was not a requirement for him to sign the Notice, I find that these factors cause me to question the reliability of the Landlord's testimony with respect to him having served the Tenant a signed copy of the Notice. I also have before me a copy of the Notice that the Tenant submitted for my consideration and this copy did not have the Landlord's signature on it. When I review the totality of the evidence before me, I am satisfied on a balance of probabilities, that the Landlord more likely than not did not serve the Tenant with a signed copy of the Notice.

As there is no signature of the Landlord on the Notice that was served to the Tenant, I am not satisfied of the validity of the Notice as it does not comply with Section 52 of the *Act*. Therefore, I find that the Notice of November 21, 2018 is of no force and effect.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application and may reduce a future month's rent in this amount.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of November 21, 2018 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: January 21, 2019

Residential Tenancy Branch