



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, MNDCT, FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 28, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated December 17, 2018.
- a monetary order for money owed or compensation for damage or loss;
- an order for emergency repairs
- an or granting the return of the filing fee

The Tenant, the Landlord and the Landlord's representative J.Y. attended the hearing, each provided affirmed testimony.

The Tenant testified that she served the Application package as well as documentary evidence to the Landlord by registered mail. The Tenant was unsure as to when she mailed the package to the Landlord, however, the Landlord confirmed receiving the Application package as well as documentary evidence on January 2, 2019. The Landlord indicated that he served his documentary evidence onto the Tenant shortly after January 2, 2019. The Tenant confirmed receipt.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). 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 *Residential Tenancy Act (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 and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the Application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Two Month Notice dated December 17, 2018.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, an order for emergency repairs are dismissed with leave to reapply.

The Tenant had submitted an amendment to their Application on January 2, 2019, to change their monetary claim to \$5,142.57. On January 15, 2019, the Tenant made another amendment to their Application, increasing the monetary amount sought to \$6,730.12. Seeing as the as the Tenant's request for a monetary order has been dismissed with leave to reapply, I find it is not necessary to address the amendments in this decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated December 17, 2018, pursuant to Section 49 of the *Act*?; and
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2010, that currently rent in the amount of \$850.00 is due to be paid to the Landlord on the first day of each month, and that a security deposit in the amount of \$425.00 was paid to the Landlord. Neither party submitted a copy of the Tenancy Agreement.

The Landlord testified that he served the Tenant with the Two Month Notice on December 17, 2018, with an effective vacancy date of February 28, 2019, by positing it on the door of the dispute address. The Tenant confirmed having received the Two Month Notice on the same day. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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 Landlord stated that he served the Two Month Notice to the Tenant as he intends on having his 20 year old son move into the rental unit occupied by the Tenant, which is a trailer located on a property next to the family home. The Landlord stated that his son works full time and feels as though it is time that his son to move out of the family home. Furthermore, the Landlord indicated that having the son stay in the family home is causing stress and issues in his marriage.

For these reasons, the Landlord is seeking the Tenant vacate the rental unit on February 28, 2019, so that the Landlord's son can move in on March 1, 2019. The Landlord testified that his son will be paying rent in the amount of \$850.00 a month.

In response, the Tenant indicated that she does not wish to move out of the trailer and feels as though she has made some great improvements to the trailer and surrounding areas, which she has not been compensated for. The Tenant is also concerned that she will not be able to hold a garage sale this time of the year to sell her belongings as she has nowhere to store them. Lastly, the Tenant feels as though the Landlord has dismissed her concerns regarding ongoing mould issues in the rental unit. For these reasons, the Tenant has applied to have the Two Month Notice cancelled.

Analysis

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good

faith to occupy the rental unit. The landlord states that his son intends to occupy the tenant's rental unit.

The Landlord served the Tenant with the Two Month Notice on December 17, 2018, with an effective vacancy date of February 28, 2018, by positing it on the door of the dispute address. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on December 17, 2018 and filed their Application on December 28, 2018. Therefore, the Tenant is within the 15 day time limit under the *Act*.

The Landlord testified that his son intends to move into the rental unit on March 1, 2019. The Tenant did not dispute that the Landlord's son intends to move in, instead focused here reasons for wanting the Two Month Notice cancelled on other factors, such as her inability to hold a garage sale or her preference to stay due to improvements she's made throughout her tenancy. I find it is more likely than not that the Landlord's son intends to move into the rental unit on March 1, 2019.

Although the Tenant stated that she feels as though the Landlord has dismissed her concerns regarding ongoing mould issues in the rental unit, and is seeking to end the tenancy as a result, there is no documentary evidence before me in support of the Tenants testimony that there is an ongoing mould issue ,that the Landlord has not addressed this mould issue, should it exist, or that the Two Month Notice has been issued by the Landlord in an attempt to avoid any obligations to address the mould issue under the Act. In contrast, the Landlord testified that the Two Month Notice has been served because his son intends to occupy the rental unit as of March 1, 2019, and the Tenant did not dispute this testimony. As a result, I find that I am satisfied by the Landlord, on a balance of probabilities, that they have not served the Two Month Notice in bad faith.

I dismiss the Tenants Application to cancel the Two Month Notice dated December 17, 2018, without leave to reapply.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective on February 28, 2019 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the

Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Tenant was not successful with their Application the Tenant is not entitled to recover the filing fee from the Landlord.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice dated December 17, 2018, is dismissed without leave to reapply. The Landlord is granted an order of possession effective on February 28, 2019 at 1:00PM. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme 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: February 14, 2019

Residential Tenancy Branch