



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI LRE OLC FFT

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) pursuant to section 49 of the *Act*;
- dispute of a rent increase pursuant to section 41 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulations and/or tenancy agreement pursuant to section 62 of the *Act*;
- an Order to suspend or restrict the landlord's right to enter pursuant to section 70 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord S.J. attended and confirmed he was authorized to speak on behalf of both the named landlords in this matter.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the notice of this hearing, the tenant's application for dispute resolution, and evidentiary documents served by Canada Post registered mail. The landlord confirmed that they did not submit any evidence for this hearing. Based on the undisputed testimonies of the parties, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Unrelated Claims

The tenant's application included unrelated claims, in addition to their claim to dispute the landlord's Two Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claims are not related to the tenant's application to cancel the Two Month Notice, and therefore the claims are dismissed and I grant the tenants liberty to reapply for these claims subject to any applicable limits set out in the *Act*:

- dispute of a rent increase pursuant to section 41 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulations and/or tenancy agreement pursuant to section 62 of the *Act*; and
- an Order to suspend or restrict the landlord's right to enter pursuant to section 70 of the *Act*.

Preliminary Issue - Procedural Matters

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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the cost of this application from the landlord?

Background and Evidence

Both parties confirmed that on July 1, 2019, the landlord served the tenant with a piece of paper on which it is typed:

*The letter serves as your notice to vacate the above property.
The last day of your tenancy will be August 31, 2019.*

The tenant claimed that the notice is not valid and seeks to have the notice cancelled.

Analysis

Section 52 of the *Act* provides that:

- 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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

In the matter at hand, the notice to end tenancy does not set out the information required in section 52 of the *Act* as the grounds for ending the tenancy are not provided and it is not signed and dated by the landlord. Further, I find that the notice is not in the approved form of the Residential Tenancy Branch "Two Month Notice to End Tenancy for Landlord's Use of Property" (#RTB-32).

Therefore, I find that the notice is not valid and the tenant is successful in his application to dispute the notice to end tenancy. The invalid notice is cancelled and of no force or effect.

The tenancy shall continue until ended in accordance with the *Act*.

As the tenant was successful in his application, he may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold \$100.00 from a future rent payment on one occasion.

Conclusion

The notice to end tenancy issued by the landlord is invalid, and therefore it is cancelled and of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

The tenant may deduct \$100.00 from a future rent payment on one occasion in full satisfaction of the recovery of the filing fee from the landlord.

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: August 30, 2019

Residential Tenancy Branch