



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, PSF, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 13, 2019 (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 July 30, 2019;
- an order that the Landlord comply with the Act;
- an order that the Landlord provide a service; and
- an or granting the return of the filing fee.

The Tenant, the Landlord, and the Landlord's Counsel B.R. attended the hearing and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlord by registered mail, however, could not recall the date of service. The Landlord confirmed receipt on August 17, 2019. The Landlord testified that he served the Tenant with his documentary evidence by registered mail on September 17, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 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 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 *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 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 in relation to the Two Month Notice.

The Tenant's request for an order that the Landlord comply with the Act and an order that the Landlord provide a service are dismissed with leave to reapply.

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 July 30, 2019, pursuant to Section 49 of the *Act*?
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 October 1, 1999, that currently rent in the amount of \$1,352.03 is due to be paid to the Landlord on the first day of each month, and that a security deposit in the amount of \$475.00 was paid to the Landlord.

The Landlord testified that he served the Tenant with the Two Month Notice on July 30, 2019 with an effective vacancy date of September 30, 2019, by placing it in the mail slot of the dispute address on July 30, 2019. 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 32 year old son move into the rental unit, which is currently being

occupied by the Tenant. The Landlord stated that his son works full time nearby and feels as though it is time that his son moves into his own residence to gain some independence. The Landlord submitted a statutory declaration from the Landlord's son which outlines his intent to occupy the rental unit on October 3, 2019 and will be paying rent in the amount of \$750.00 each month.

In response, the Tenant stated that he does not contest the fact that the Landlord's son will occupy the rental unit, however, the Tenant focussed his dispute around the opportunity for the Tenant's son to create a short-term vacation rental arrangement for the remaining bedrooms in the rental unit. The Tenant stated that there is a growing market for such short-term vacation rentals, therefore, he suspects that this is the true intent behind the Two Month Notice. For these reasons, the Tenant has applied to have the Two Month Notice cancelled.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

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 July 30, 2019, with an effective vacancy date of September 30, 2019, by placing it in the Tenant's mail slot. 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 July 30, 2019 and filed their Application on August 13, 2019. Therefore, the Tenant is within the 15 day time limit under the *Act*.

The Landlord testified that his 32 year old son intends to move into the rental unit as he works nearby and it is time that his son gain some independence by living on his own. The Tenant did not dispute that the Landlord's son intends to move in, instead focused his reasons for wanting the Two Month Notice cancelled on the opportunity for the Landlord's son to operate a short-term vacation rental in the other bedrooms contained in the rental unit.

In this case, I find that the Tenant did not dispute the Landlord's intent for serving the Two Month Notice, instead, he felt as that the Landlord's son may take the opportunity

to operate a short-term rental. I find that the Tenant provided insufficient evidence to demonstrate that the Landlord served the Two Month Notice in bad faith. I find that I am satisfied, on a balance of probabilities, that the Landlord's son intends to occupy the rental unit and that the Landlord has not served the Two Month Notice in bad faith.

As such, I dismiss the Tenant's Application to cancel the Two Month Notice dated July 30, 2019, without leave to reapply. The Landlord and the Tenant should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

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 October 31, 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 his 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 July 30, 2019, is dismissed without leave to reapply. The Landlord is granted an order of possession effective on October 31, 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: October 07, 2019

Residential Tenancy Branch