



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 12, 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 31, 2019;
- an order that the Landlord comply with the *Act*, tenancy agreement or regulation; and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlord in person on August 12, 2019. The Landlord 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 Landlord stated that he did not serve his documentary evidence to the Tenant.

Preliminary and Procedural Matters

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondent's proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Landlord did not serve the Tenant with his evidence; therefore, the only evidence I will consider from the Landlord is their oral testimony during the hearing.

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.

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 31, 2019, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, pursuant to Section 62 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
4. 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 testified and agreed to the following; the tenancy began on January 1, 2016. Currently the Tenant pays rent in the amount of \$940.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00 which the Landlord continues to hold.

The Landlord testified that he served the Tenant in person with the Two Month Notice on July 31, 2019, with an effective vacancy date of September 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 son and his son's family move into the basement rental unit which is currently occupied by the Tenant. The Landlord stated that his son and his son's family are currently living upstairs and that there is not enough room for all of them. The Landlord stated that his son intends on occupying the basement rental unit. The Landlord stated that he and his wife are aging, and their health is deteriorating, therefore, they would like to have his family live close by to assist them if need be. The Landlord stated that as a result, the Landlord is seeking to end the tenancy.

In response, the Tenant stated that he feels as though the Landlord has served the Two Month Notice in bad faith. The Tenant stated that he has brought forward his concerns to the Landlord regarding the amount of noise there is upstairs. The Tenant stated that the Landlord and his children and grandchildren stomp around on the floor above him at all hours of the night, which makes it difficult for him to sleep. The Tenant stated that he has spoken to the Landlord about this, however, he was told that there was nothing that the Landlord could do about the noise and suggested that the Tenant move out.

As such, the Tenant stated that he feels as though the Landlord is seeking to end the tenancy as a result of the Tenant's complaints regarding the noise. Furthermore, the Tenant stated that the Landlord has more than enough room upstairs to accommodate his son and family, therefore, the Tenant suspects that the Landlord will re-rent the rental unit for greater amount of rent.

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 stated that his son and his son's family intends to occupy the rental unit.

The Landlord served the Tenant in person with the Two Month Notice on July 31, 2019, with an effective vacancy date of September 30, 2019. 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 31, 2019 and filed the Application on August 12, 2019. Therefore, the Tenant is within the 15 day time limit under the *Act*.

The Landlord testified that his son and his son's family intend to move into the rental unit once it is vacant. The Tenant stated that he doesn't feel as though Landlord served the Two Month Notice in good faith, instead, the Tenant expressed his displeasure with

the amount of noise he has had to endure throughout the tenancy and that his concerns have been dismissed by the Landlord, which has resulted in them wishing to end the tenancy.

Although the Tenant stated that the Landlord has dismissed his concerns regarding the ongoing noise issues at the rental unit, there is no documentary evidence before me indicating that the Tenant has notified the Landlord about his concerns throughout the tenancy and that the Landlord have not addressed the noise issue. I find that the Tenant has provided insufficient evidence to demonstrate that the Two Month Notice has been issued by the Landlord in an attempt to avoid any obligations to address the Tenant's concerns under the Act. Furthermore, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord intends to re-rent the rental unit.

In contrast, the Landlord testified that the Two Month Notice has been served because his son and his son's family intend to occupy the rental unit. I am satisfied by the Landlord, on a balance of probabilities, that he 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 31, 2019, without leave to reapply. I further find that the Tenant has provided insufficient evidence that the Landlord has breached the *Act*. As such, I dismiss the Tenant's claim for an order that the Landlord comply with the *Act*.

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. The parties agreed that the Tenant has paid rent in full for the month of October 2019. Therefore, I grant the Landlord 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 unsuccessful with the Application, I find that the Tenant is not entitled to recover the filing fee paid to make the Application.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice dated July 31, 2019, as well as an order that the Landlord comply with the Act are 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 18, 2019

Residential Tenancy Branch