



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNR MNDCT OLC RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 16, 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 August 27, 2019;
- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") dated September 13, 2019;
- a monetary order for damage or compensation;
- an order that the Landlord comply with the tenancy agreement, Act, or regulations; and
- an order for regular repairs.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony. During the hearing, the parties testified and agreed that they served and received their respective Application and documentary evidence packages to each other. As no issues were raised regarding service, I find that they were effectively served pursuant to Section 71 of 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 due to the Two Month Notice, and the 10 Day Notice to end tenancy.

The Tenant's request for a monetary order for damage or compensation, an order that the Landlord comply with the Act, and an order for repairs are dismissed with leave to reapply.

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 *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by the 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*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice dated August 27, 2019, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to an order to cancel a 10 Day Notice dated September 13, 2019, pursuant to Section 46 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice or the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Tenant stated that the tenancy began on February 9, 2019, while the Landlord stated that the tenancy began on February 1, 2019. The parties testified and agreed that the Tenant is required to pay rent in the amount of \$1,950.00 to the Landlord which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$975.00 as well as a pet damage deposit in the amount of \$400.00.

The Landlord testified that he served the Tenant with the Two Month Notice on August 27, 2019, with an effective vacancy date of October 28, 2019 by posting it on the Tenant's door. The Tenant confirmed having received the Two Month Notice on August 28, 2019. 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 souse).”

The Landlord stated that he is currently living with his parents in the family home with his wife. The Landlord stated that he owns his own home which he rents to the Tenant. The Landlord stated that recently, there has been some conflict between his wife and his mother, which has resulted in the Landlord seeking to move out of the family home and into the rental unit which he owns. The Landlord stated that he feels as though it is time that he and his wife move out on their own and hope to start a family soon.

For these reasons, the Landlord is seeking to end the tenancy and have the Tenant vacate the rental unit so that he and his wife can take move into the rental unit as soon as he obtains vacant possession.

In response, the Tenant indicated that she does not feel as though the Landlord is acting in good faith as she feels as though he has been agreeable to extending the tenancy and cancelling the notice if the Tenant would pay the outstanding balance of rent owed. The Tenant referred to issues with the tenancy including repairs that the Landlord has failed to complete as well as ongoing conflict between the Tenant and the Landlord.

The Tenant stated that she currently occupies the upstairs of the home, and that there is another occupant who rents the basement suite. The Tenant stated that the Landlord has mentioned in the past that he could move into the basement instead of upstairs, which would continue her tenancy. In response, the Landlord stated that the occupants of the basement suite are in a fixed term tenancy and that he intends to occupy the upstairs of the rental unit which is currently being occupied by the Tenant who is in arrears with the 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 he and his wife intend on moving into the rental unit.

The Landlord served the Tenant with the Two Month Notice on August 27, 2019, with an effective vacancy date of October 28, 2019. The Tenant confirmed having received the notice posted to her door on August 28, 2019. 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.

According to subsection 49(9) of the *Act*, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the Tenant testified that she received the Two Month Notice on August 28, 2019. Therefore, the Tenant had until September 12, 2019 to make an Application for dispute resolution or is conclusively presumed to have accepted the tenancy has ended on the effective date on the Two Month Notice. I find that the Tenant filed her Application on September 16, 2019, which is outside of the statutory timeline outlined in Section 49(8) of the Act.

As the Tenant did not apply to dispute the Two Month Notice in accordance with Section 49(8), I dismiss the Tenant's Application to dispute Two Month Notice dated August 27, 2019 without leave to reapply.

Furthermore, I find that the Landlord has provided sufficient evidence to demonstrate that he and his wife intend to move into the rental unit as indicated on the Two Month Notice. 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 November 30, 2019 at 1:00 P.M., after service on the Tenant 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.

Conclusion

I accept the evidence of the Landlord that he intends to use the rental unit for his own use; therefore, I do not find that the notice should be cancelled. Furthermore, the Tenant filed her Application late. Therefore, the Tenant's Application seeking cancellation of the Two Month Notice dated August 27, 2019 is dismissed without leave to reapply. The Landlord is granted an order of possession effective on November 30, 2019 at 1:00 P.M., after service on the Tenant. The order should be served to 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: November 26, 2019

Residential Tenancy Branch