



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a Four Month Notice to End Tenancy for Cause (the “Four Month Notice”) and recovery of the filing fee.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. The line remained open for 17 minutes; however, the Landlord did not attend. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Application, the Notice of Hearing, and their documentary evidence was served on the Landlord by registered mail and provided a copy of the registered mail receipt for my review. With the Tenant’s consent, I logged into the mail service provider’s tracking service to verify the status of the registered mail. According to the mail service provider, the package was mailed on December 30, 2019, and signed for and received on January 2, 2020. A signature was also captured by the mail service provider upon delivery. As the registered mail receipt shows the same address for the Landlord as that shown on the Four Month Notice, and the tracking status shows

that is was received January 2, 2020, I find that the Landlord was served with the Application, the Notice of Hearing, and the documentary evidence before me from the Tenant on January 2, 2020.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Tenant, copies of the decision will be e-mailed to them at the email address provided in their Application.

Preliminary Matters

Preliminary Matter #1

In reviewing the documentary evidence before me, I noted that the landlord named in the tenancy agreement is different than the landlord named on the Four Month Notice and the Application. The Tenant stated that their landlord has changed several times since their tenancy began but the landlord named in the Four Month Notice and the Application is their current landlord. Based on the undisputed testimony of the Tenant and the documentary evidence before me, I am satisfied that the party named as the landlord in the Application is the current landlord and I will therefore refer to them as the "Landlord" throughout this decision.

Preliminary Matter #2

Although the tenancy agreement does not specify a unit number, the Tenant stated that they live in the upper unit of a house and that another tenant lives in the basement. As a result, I have amended the Application to correctly reflect the Tenant's rental unit address.

Issue(s) to be Decided

Is there a valid reason to cancel the Four Month Notice under the *Act*?

If the Tenant is unsuccessful in cancelling the Four Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act*?

Is the Tenant entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy began on August 1, 2017, with a different Landlord, that the fixed term ended on October 31, 2018, and that rent in the amount of \$2,700.00 is due on the first day of each month. As stated above in the Preliminary Matters section, the Tenant stated that the Landlord has changed several times since the start of their tenancy and is currently the Landlord listed as the Respondent in the Application. When asked, the Tenant stated that they rent the upper unit of a house and believe that there is another tenant in the basement. The Tenant stated that the entire block has been issued Four Month Notice's by the Landlord and that the Landlord does not have a demolition permit. The Tenant also stated that the Landlord has not provided them with any proof that they have any and all permits and approvals required by law to demolish the rental unit, which is the purpose for ending the tenancy agreement according to the Four Month Notice.

The Tenant submitted a copy of the Four Month Notice, dated December 2, 2019, which has an effective vacancy date of April 20, 2020, and states that the rental unit will be demolished. The Four Month Notice was accompanied by a generic letter advising the Tenant to vacate the premises by April 2, 2020, because of the Landlord's site re-development plan. The letter also advised the Tenant that they were entitled to one month of free rent and to give the Landlord 30 days notice when they decided to vacate.

The Tenant testified that they received the Four Month Notice and accompanying letter by email on December 2, 2019.

The Landlord did not appear in the hearing or submit any documentary evidence for my consideration.

Analysis

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove that they had sufficient cause under the *Act* to issue the notice. In reviewing the Four Month Notice I note that the Landlord did not indicate that they have all the permits and approvals required by law to demolish the rental unit, or list any permit or approvals received as of the date the Four Month Notice was served. Further to this, the Landlord did not attend the hearing or provide any evidence for consideration. As a result, I find that they have failed to establish, on a balance of probabilities, that they have cause to end the tenancy under the *Act*.

I also find that the Four Month Notice does not comply with section 52 of the *Act* as it does not include the unit number or other designation for the unit the Tenant rents in the house and therefore cannot properly be considered as containing the address of the rental unit. Although not a requirement of section 52, I note that neither the Four Month Notice nor the accompanying letter state the Tenant's name. Further to the above, I find that the Landlord failed to serve the Tenant with the Four Month Notice in the manner required by section 89 of the *Act*.

As a result of the above, I find that the Four Month Notice is not valid and I order that it be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

As the Tenant was successful in their Application, I authorize them to deduct \$100.00 from the next month's rent, or to otherwise recover this amount from the Landlord, for the recovery of the filing fee pursuant to section 72 of the *Act*.

Further to the above, it appears to me as though the Landlord may be attempting to contract outside of the *Act* in order to make tenants give more notice than is required to vacate as a result of the Four Month Notice, or to avoid the possibility of future claims for compensation under section 51 (2) of the *Act*, or both, by requiring tenants to give 30 days notice to vacate their rental units. Section 50 of the *Act* clearly states that if a landlord gives a tenant a notice to end a periodic tenancy under section 49, the tenant may end the tenancy early by giving the landlord at least 10 days written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. It also states that notice under this section does not affect the tenant's right to compensation under section 51. I strongly encourage both parties to review their rights and responsibilities under the *Act* in relation to ending a tenancy pursuant to sections 45 and 49 of the *Act*, as well as their entitlement to receive or their requirement to pay, compensation under section 51 of the *Act*. The parties should also be aware that landlords and tenants may not avoid or contract out of this *Act* or the regulations and that any attempt to do so is of no effect.

Conclusion

I Order that the Four Month Notice dated on December 2, 2019, is cancelled and of no force or effect.

I Order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

I also authorize the Tenant to withhold \$100.00 from the next months rent, or otherwise recover this amount from the Landlord, for recovery of the filing fee.

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 24, 2020

Residential Tenancy Branch