



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CrossRidge Ventures
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MT CNL 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 of Property (the "**Notice**") pursuant to section 49;
- more time to make an application to cancel the Notice pursuant to section 66; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution form and supporting evidence package via registered mail on January 16, 2020. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with this package on January 21, 2020, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, although this application was brought by the tenant, I find that the landlord bears the onus to prove that the Notice is valid.

I note that the tenant still bears the onus to prove that his is entitled to more time to file this application. However, even if the tenant failed to do this, the landlord would still have to prove that the Notice, in order to be valid, meets the form and content requirements set out at section 52, which states:

Form and content of notice to end tenancy

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.

The tenant testified that address listed on the Notice is incorrect. As the landlord did not attend the hearing, I have no evidence before me to refute this evidence.

I note that Rule 7.4 states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, I decline to consider the written evidence submitted by the landlord.

I accept the tenant's uncontroverted testimony that the address of the rental unit listed on the Notice is incorrect. As such, I find that the Notice fails to meet the form and content requirements of section 52.

Accordingly, I find that the Notice is invalid and order that it be cancelled. The tenancy shall continue.

As the tenant has been successful in his application, he is entitled to recover his filing fee (\$100) from the landlord. Per section 72(2) of the Act, the tenant may deduct this amount from his next months' rent in satisfaction of this monetary order.

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: March 16, 2020

Residential Tenancy Branch