Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RR, PSF, FFT
OPL, MNRL, MNDCL, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") and two Amendments to an Application for Dispute Resolution (the "Amendment") that were filed by the Tenant under the *Residential Tenancy Act* (the "Act"), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice");
- An order for the Landlord to provide services of facilities required by the tenancy agreement or law;
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement;
- Authorization to change the locks;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- 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*.

This hearing also dealt with a Cross-Application for Dispute Resolution that was filed by the Landlord (the "Landlord's Application") under the *Residential Tenancy Act* (the "*Act*"), seeking:

- An Order of Possession based on the Two Month Notice;
- Compensation for damage caused by the Tenant, their pets or guests to the unit, site, or property;
- Compensation for monetary loss or other money owed;

- Recovery of unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, a witness for the Landlord (the "Witness"), the Tenant and the Tenant's support person, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing.

Preliminary Matters

Matter #1

In their Applications both the Tenant and the Landlord sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a Two Month Notice and the Landlord applied for an Order of Possession in relation to the Two Month Notice, I find that the priority claims relate to whether the tenancy will continue or end. I find that the other claims made by the parties are not sufficiently related to the Two Month Notice or continuation of the tenancy and as a result, I exercise my discretion to dismiss the remaining claims of both parties with leave to reapply.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the Two Month Notice, the Landlord's Application seeking an Order of Possession for the rental unit based on the Two Month Notice, and both parties Applications seeking recovery of the filing fee.

Matter #2

At the outset of the hearing the parties were advised that although there is no obligation to resolve the dispute through settlement, I could assist the parties to reach a settlement agreement pursuant to section 63 of the *Act*. Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Matter #3

The Tenant stated that the Notice of Dispute Resolution Proceeding, including a copy of their Application, the Notice of Hearing, and copies of their documentary evidence were sent to the Landlord by registered mail at the rental unit address. The Landlord denied receipt of this registered mail and the registered mail tracking number provided shows that the registered mail was never picked up. The Landlord stated that the rental unit is not their address for service on the tenancy agreement or the Two Month Notice and that the Tenant should have sent them the registered mail at their own address, not the rental unit address.

The Tenant acknowledged that the rental unit is not the address at which the Landlord lives or the address for service for the Landlord on the tenancy agreement or the Two Month Notice. However, the Tenant stated that the Landlord has always received mail at that address so that is why they used it. The Landlord responded by stating that they were ordered by an arbitrator in a decision dated January 24, 2020, to immediately stop accessing the mailbox associated with the Tenant's rental unit, and so they did. A copy of the decision was before me for consideration. The Tenant stated that the Landlord is still accessing their mailbox and was therefore aware of the registered mail but simply avoided picking it up. When asked, the Tenant could not point to any documentary evidence before me in support of their position that the Landlord is still accessing their mailbox. They were also unable to call any witnesses at the time of the hearing to provide testimony in support of this assertion.

Section 88 and 89 of the *Act* are clear that mail must be sent 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. The Tenant had available to them, on both the Two Month Notice and the tenancy agreement, the Landlord's address for service and I find that it was incumbent upon the Tenant to use that address for the service of any mail.

Further to this, I find that it was unreasonable for the Tenant to assume that the Landlord would have access to their mailbox for the purpose of receiving notice of the registered mail, after having been explicitly directed by an arbitrator with the Branch on January 24, 2020, to cease all access to the Tenant's mailbox while the tenancy continued.

The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlord was not served with the Application, the Notice of Hearing, or the Tenant's documentary evidence, I find that they did not have a fair opportunity to know the case against them. As a result, I find that it would be a breach of the Rules of Procedure and the principles of natural justice to proceed with the Tenant's Application and their Application is therefore dismissed.

Section 55 of the *Act* states that I must consider if the Landlord is entitled to an Order of Possession as the Tenant's Application seeking cancellation of the Two Month Notice has been dismissed. As a result, I will now turn my mind to whether the Two Month Notice complies with section 52 of the *Act*.

Section 52 of the *Act* states that in order to be effective, a notice to end tenancy issued by a landlord must be in writing, signed and dated by the landlord giving the notice, state the grounds for ending the tenancy, give the address of the rental unit, state the effective date of the notice, and be in the approved form.

Upon review of the documentary evidence before me, I note that the postal code for the rental unit is incorrect on all copies of the Two Month Notice before me from both parties in the section relating to the rental unit to be vacated as a result of the Two Month Notice. Section 52 of the *Act* requires very little of notices to end tenancy in order for them to be effective. As a result, I take these requirements very seriously. As the postal code for the rental unit to be vacated is incorrect on the Two Month Notice, I therefore find that the Two Month Notice is not effective as it does not comply with section 52 (b) of the *Act*.

Having made this finding, I find that I cannot grant the Landlords an Order of Possession pursuant to section 55 of the *Act*, despite the fact that the Tenant's Application seeking cancellation of the Two Month Notice has been dismissed. Further to this, I find that I must dismiss the Landlords' Application seeking an Order of Possession based on the Two Month Notice without leave to reapply as I have already found that the Two Month Notice is not valid.

As the Two Month Notice is not valid, I therefore 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 neither party was successful in their Application, I decline to grant either party recovery of the filing fee.

Conclusion

Both parties Applications in relation to the Two Month Notice and recovery of the filing fee are dismissed without leave to reapply.

I Order that the Two Month Notice signed dated January 26, 2020, be canceled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

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: April 6, 2020

Residential Tenancy Branch