



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was 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”).

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 Respondent 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 Respondent, who is an agent of the Landlord (the “Agent”), did not attend the hearing, I confirmed service of documents as explained below.

The Tenant testified that the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, were sent to the Agent by registered mail at the address for service for the Landlord listed on the Two Month Notice. The Tenant also provided me with the registered mail tracking number.

With the Tenant's consent I tracked the registered mail through the Canada Post website and confirmed that the registered mail was sent as described above on February 10, 2020, and received by the Agent on February 13, 2020. By inputting the postal code for the address for service listed for the Landlord on the Two Month Notice, I was able to confirm that this was the postal code to which the registered mail was sent and view confirmation that the Agent had received the registered mail.

Based on the above, I find that the agent was served with the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, on February 13, 2020.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As the Tenant and I attended the hearing on time and ready to proceed, and there is no evidence before me that the parties agreed to reschedule the hearing, the hearing proceeded as scheduled despite the absence of the Respondent/Agent.

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

At the request of the Tenant, a copy of the decision will be e-mailed to them at the e-mail addresses provided in the Application.

Issue(s) to be Decided

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

If the Tenant's Application seeking cancellation of the Two Month Notice is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?

Background and Evidence

The Tenant testified that on or about February 26, 2020, they received the Two Month Notice by mail but do not agree with the reasons stated by the Agent for ending the tenancy. As a result, the Tenant stated that they filed their Application seeking to

dispute the Two Month Notice with the Residential Tenancy Branch on February 6, 2020, and paid the filing fee on February 7, 2020.

The Tenant submitted a copy of the Two Month Notice, dated January 21, 2020, which has an effective vacancy date of April 1, 2020, and states that the reason for ending the tenancy is because the Landlord or their close family member intends in good faith to occupy the rental unit.

The Tenant testified that they believe the Two Month Notice has been served in bad faith and that neither the Landlord, who they believe does not reside in the country, nor their close family members have any intention of residing in the rental unit. The Tenant stated that it is their belief that the Landlord intends to re-rent the unit to other tenants at an increased rent amount.

Neither the owner nor the Agent attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Section 49 (5) of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. I accept the Tenant's undisputed testimony that they received the Two Month Notice on or about January 26, 2020. As the Tenant filed their Application on February 6, 2020, and paid the filing fee on February 7, 2020, I find that their Application was made on time on February 7, 2020, in compliance with section 49 (5) of the *Act*.

The ending of a tenancy is a serious matter and rule 6.6 of the Rules of Procedure states that 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. As neither the Landlord nor the Agent attended the hearing to provide any evidence or testimony for my consideration, I find that they have failed to establish, on a balance of probabilities, that they had cause to end the tenancy under section 49 of the *Act*. As a result, the Two Month Notice is cancelled, and I Order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Section 72 of the *Act* states that I may order repayment of a fee under section 59 (2) (c) [*starting proceedings*] by one party to a dispute resolution proceeding to another party and that in the case of payment from a landlord to a tenant, that this amount may

be deducted from any rent due to the landlord. As the Tenant was successful in their Application and paid the \$100.00 filing fee, I Order that the Tenant is entitled to recovery of the \$100.00 filing fee from the Landlord and that they may therefore deduct \$100.00 from rent, or other wise recover this amount from the Landlord.

Conclusion

I Order that the Two Month Notice dated on January 21, 2020, is cancelled.

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

I Order that the Tenant is entitled to deduct \$100.00 from rent, or to 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: April 17, 2020

Residential Tenancy Branch