



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, MT

Introduction

On April 21, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*") and seeking more time to dispute the Notice pursuant to Section 66 of the *Act*.

The Tenants did not attend the 22-minute hearing. M.B attended the hearing as counsel for the Landlords, and P.H. attended the hearing as Power of Attorney for the Landlords. P.H. provided a solemn affirmation.

M.B. advised that the Landlords' evidence was served to the Tenants by email on May 20, 2020 and he confirmed that this was received. Based on this undisputed testimony, this evidence was accepted and considered when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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 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 complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlords' Notice dismissed?
- Are the Tenants entitled to more time to dispute the Notice?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

M.B. advised that the tenancy started approximately nine years ago, and a written tenancy agreement was never created. Rent was currently \$700.00 per month and was due on the first day of each month. Neither a security deposit nor a pet damage deposit was paid.

He stated that the Notice was served by registered mail on February 21, 2020. The reason the Landlords served the Notice is because "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 spouse)." The effective end of tenancy date on the Notice was noted as June 1, 2020.

Both the Tenants and the Landlords submitted a copy of the Notice for consideration and neither copy of the Notice was signed nor dated by the Landlords. When M.B. was asked about these discrepancies, he stated that he was not sure if the Notice was dated or signed but they would have been done "on their end." However, he could not be sure if it was signed or dated and he acknowledged that the responsibility to do this would have been on his office. Despite this Notice not being signed or dated, M.B. relied on the Tenants conclusively being presumed to have accepted the Notice pursuant to Section 49(9) of the *Act*, and he was seeking an Order of Possession.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

When reviewing the Tenants' Application, they chose to dispute a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit; however, this was not the reason the Notice was served. As there was nothing else in their Application pertaining to a dispute over subsidized rent, I infer that this was a mistake and that they wanted to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property. This is the issue that will be addressed in this Decision.

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

With respect to the Notice served to the Tenants on February 21, 2020, I have reviewed each copy of the Notice provided to me by both parties to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. As both copies of the Notice are not signed and dated, and as neither M.B. nor P.H. could definitively confirm that the Notice served to the Tenants was signed or dated, I can reasonably infer that the Notice that the Tenants were served was neither signed nor dated.

As there is no signature of the Landlords on the Notice, or a date signed, I am not satisfied of the validity of the Notice as it does not comply with Section 52 of the *Act*. Therefore, I find that the Notice of February 21, 2020 is of no force and effect.

While M.B. wanted to rely on the conclusive presumption of Section 49(9) of the *Act*, an Order of Possession cannot be awarded as this Notice is not a valid Notice to begin with.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of February 21, 2020 to be cancelled and of no force or effect. This tenancy continues until 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: May 28, 2020

Residential Tenancy Branch