



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT LRE OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlords' right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background

This fixed-term tenancy began on July 1, 2019, with monthly rent set at \$5,000.00, payable on the first of every month. The landlords collected a security deposit in the amount of \$2,500.00, which the landlords still hold.

The landlords testified that on March 2, 2020 they had emailed the tenant a 2 Month Notice to End Tenancy, followed by a signed copy of the letter and Notice by regular mail on March 9, 2020. The landlords provided a copy of the email, as well as the attached letter and a 2 Month Notice to End Tenancy dated March 2, 2020 in their evidentiary materials. The landlord argued that the tenant received the 2 Month Notice along with the letter, and that the tenant's response to the landlord and request to renegotiate a new tenancy agreement the landlord confirms receipt of the 2 Month Notice.

The tenant testified that he was sent an email from the landlords on March 2, 2020 with an attached letter, and on April 17, 2020 he received a 2 Month Notice on RTB Form 32. The tenant testified that in March of 2020, he had never received any 2 Month Notices that comply with section 52 of the *Act*. The tenant pointed out that the email dated March 2, 2020 does not reference the 2 Month Notice emailed to him on April 17, 2020.

The email, dated March 2, 2020, that was sent to the tenant states as follows, and contained an attachment titled "end of tenancy.doc":

"Hi

I am sorry to inform you that my sister suddenly decided to get married this summer and would need the house to start her family.

Attached is the letter to end our tenancy. Thank you for understanding. We wish you all the best in the future home.

Kind regards"

The attached letter reads as follows:

“This letter serves as notice to terminate the periodic tenancy agreement at the above address.

The last day of tenancy will be 30 June 2020 when the initial tenancy contract expires.

The residential tenancy act requires me to give you not less than 21 days notice to terminate the agreement.

Please contact me if you have any other questions.”

The landlords argue that the tenant was served with the proper notice on March 2, 2020 by way of email, and March 9, 2020 by way of regular mail.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* provides the following requirements requiring the form and content of notices 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, and

(e) when given by a landlord, be in the approved form...

While the landlords testified that the tenant was provided with a proper 2 Month Notice as well as the accompanying letter, the tenant disputes receipt of a 2 Month Notice on an RTB Form until April 17, 2020.

The landlords' testimony that the tenant was served with a 2 Month Notice in the proper form contradicts the documents provided by the landlords. In the email submitted by the

landlords dated March 2, 2020, only one attachment is referenced in the email titled “end of tenancy.docx”. The email references the attached “letter to end our tenancy”, but not any Notices. The landlords included a copy of the attached letter which, in the landlords’ own words, “serves as notice to terminate the periodic tenancy agreement”, and states the effective date as “30 June 2020”. The letter does not reference any further attachments or a Notice to End Tenancy. Although the landlords testified to service of the Notice to End Tenancy by mail on March 9, 2020, I find that the landlords’ evidence does not support that a Notice to End Tenancy was included in that package. The burden of proof is on the landlords to support that the tenant was served with the Notice to End Tenancy in a form that complies with section 52 of the *Act*. I find that the letter issued by the landlords have no legal effect because it does not comply with the requirements of section 52 (e) of the *Act*, as the letter does not constitute an approved form under the *Act* and *Regulations*.

I find that the email and attached letter makes no reference to an attached Notice to End Tenancy in the proper form. In light of the disputed testimony, I find that the landlords have not met their evidentiary burden on a balance of probabilities to support that the tenant was served with a 2 Month Notice to End Tenancy that complies with section 52(3) of the *Act* until April 17, 2020. As the Ministerial Order dated March 30, 2020 prohibits the issuance of a Notice to End Tenancy under section 49 of the *Act*, I find the 2 Month Notice received by the tenant on April 17, 2020 to have no legal effect.

As I am not satisfied that the tenant was served with a Notice to End Tenancy in the proper form prior to March 30, 2020, I allow the tenant’s application to cancel the 2 Month Notice to End Tenancy. The tenancy is to continue until ended in accordance with the *Act*.

I allow the tenant to recover the filing fee for this application. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

I am not satisfied that the landlords have contravened the *Act* in a manner that necessitates the issuance of any further orders. Accordingly, I dismiss the remainder of the tenant’s application without leave to reapply.

Conclusion

The tenant’s application to cancel the landlord’s 2 Month Notice is allowed. The landlord’s 2 Month Notice, dated March 2, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount.

The remainder of the tenant's application is dismissed without leave to reapply.

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: June 5, 2020

Residential Tenancy Branch