



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT, MNDCT, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 13, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated July 6, 2020;
- an order restricting or suspending the Landlord's right to enter;
- an order that the Landlord comply with the *Act*, tenancy agreement or regulation;
- a monetary order for compensation; and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has

applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the Two Month Notice.

The Tenant's request for an order restricting or suspending the Landlord's right to enter, an order that the Landlord comply with the *Act*, tenancy agreement or regulation, and a monetary order for compensation are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2017. The Tenant is required to pay rent in the amount of \$1,000.00 to the Landlord on the first day of each month. The parties agreed that the Tenant pays \$500.00 to the Landlord on the first day of each month. The Tenant is also given a \$500.00 credit towards his rent for renovation work the Tenant completed at the rental unit for the Landlord. The Tenant was not required to pay a security deposit. Neither party provided a tenancy agreement.

The Landlord testified that he served the Tenant with the Two Month Notice by registered mail on July 7, 2020, with an effective vacancy date of September 30, 2020. The Tenant confirmed having received the Two Month Notice on July 8, 2020. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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 Landlord stated that he served the Two Month Notice to the Tenant as he and his partner intend on taking over the basement rental unit which is currently occupied by the Tenant. The Landlord stated that he has recently retired and that his partner works from home, which requires more space. Furthermore, they require an additional bedroom for when their grandchildren visit. The Landlord stated that as a result, the Landlord wishes the end the tenancy with the Tenant on September 30, 2020.

In response, the Tenant did not deny that the Landlord's intend on occupying the basement of the rental property, however, the Tenant stated that he is concerned that he will not be fully compensated for the work he performed for the Landlord. The Tenant stated that he receives a \$500.00 credit each month towards his rent and feels as though he is owed a further \$23,000.00 from the Landlord. The Landlord denied that such an amount is owed to the Tenant.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

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. The Landlord stated that he and his partner require more space and would like to take over the basement as a result.

The Landlord served the Tenant in person with the Two Month Notice on July 7, 2020, with an effective vacancy date of September 30, 2020. The Tenant confirmed having received the notice on July 8, 2020. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on July 8, 2020 and filed the Application on July 13, 2020. Therefore, the Tenant is within the 15 day time limit under the Act.

Although the Tenant stated the Landlord owes him compensation for work he performed for the Landlord, I find that the Tenant has provided insufficient evidence to demonstrate that the Two Month Notice has been issued by the Landlord in an attempt to avoid any obligations under the Act. In contrast, the Landlord testified that the Two Month Notice has been served because he and his partner need more space and intend to occupy the rental unit as of September 30, 2020, and the Tenant did not dispute this testimony. As a result, I find on a balance of probabilities, that the Landlord has not served the Two Month Notice in bad faith.

As such, I dismiss the Tenant's Application to cancel the Two Month Notice, without leave to reapply. As the Tenant was not successful with the Application, I find that he is not entitled to the return of the filing fee.

The Landlord and the Tenant should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective on September 30, 2020 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply. The Landlord is granted an order of possession effective on September 30, 2020 at 1:00PM. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: August 18, 2020

Residential Tenancy Branch