



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's Use of property ("2 Month Notice") dated July 27, 2020.

At the outset of the hearing, an agent appeared for the tenant and an agent appeared for the owner, along with their respective assistants.

I confirmed the parties had exchanged their respective hearing materials upon each other.

Preliminary and Procedural Matters

1. Naming of tenant and authorized agent

The tenant's agent had identified himself as the tenant in filing this Application for Dispute Resolution. I noted that the tenancy agreement and the subject 2 Month Notice identify the tenant as being someone other than the person who filed this Application for Dispute Resolution. There was no written authorization from the tenant indicating she was disputing the 2 Month Notice or appointing an agent to do so on her behalf.

I requested the tenant be called to the hearing to confirm she seeks to dispute the 2 Month Notice and continue the tenancy and have her brother act as her agent. The tenant called into the hearing and confirmed she seeks to dispute the 2 Month Notice and continue the tenancy and that her brother is authorized to act as her agent. The tenant testified that she continues to reside at the rental unit although her children have moved out and her brother lives at the rental unit with her. The tenant acknowledged she remains liable to pay rent to the landlord.

The tenant's agent confirmed he resides at the rental unit.

The landlord's agent questioned whether the tenant actually resides in the rental unit as neighbours had witnessed her move out.

I did not consider it necessary to determine whether the tenant continues to reside in the rental unit for purposes of this proceeding as residency does not in itself create a tenancy and cessation of residency does not in itself end a tenancy. Rather, a tenancy ends pursuant to one of the ways provided in section 44 of the Act. I did not hear evidence that the tenant has returned vacant possession of the rental unit to the landlord or abandoned the rental unit as it is undisputed that there continues to be possessions in the rental unit and it is inhabited by the tenant's brother, and possibly the tenant.

I amended the style of cause to identify the tenant as being the person named on the written tenancy agreement and the 2 Month Notice, without objection.

The tenant was excused at this point and I continued to hear from her agent.

2. Naming of landlord and authorized agent

The landlord's agent testified that she entered into a written management agreement with the owner of the property on August 1, 2020; however, she had the owner's authorization to issue and serve the subject 2 Month Notice prior to August 1, 2020. The landlord's agent provided the name of the owner and I refer to the owner by initials ASN.

The landlord's agent testified that the property was transferred to the current owner, ASN, by way of a sales contract that had a completion date of July 30, 2020 and a possession date of July 31, 2020. The landlord's agent tried to confirm the information by way of a land title search during the hearing but she was unsuccessful in obtaining the results before the hearing ended and I proceed to make this decision based on testimony.

The 2 Month Notice before me indicates the landlord's agent is the landlord on page 1 of the 2 Month Notice. The second page indicates the reason for ending the tenancy is so that the landlord or landlord's spouse may occupy the rental unit. The landlord's

agent testified that he has been informed that ASN and/or ASN's spouse intends to occupy the property.

This Application for Dispute Resolution was filed on August 13, 2020 and I accept the unopposed testimony that the landlord's agent was acting on behalf of the owner on that date. Since the definition of landlord, as provided under section 1 of the Act, includes the owner of the property, or the owner's agent. I accept that the landlord's agent met the definition of "landlord" under the Act when this Application for Dispute Resolution was filed and the naming of the landlord is accurate on the Application for Dispute Resolution.

3. Order(s) for compliance

The tenant indicated she was seeking orders for compliance but she did not specify the remedy sought except to state she wants the landlord to follow the rules and not require the tenant to move out. Based on this limited submission, I find the landlord has not been put on sufficient notice as to what remedy the tenant seeks except to have the 2 Month Notice cancelled. Accordingly, I proceeded to hear from the parties with respect to the 2 Month Notice but I did not hear any other matters.

Issue(s) to be Decided

Did the landlord issue a valid and enforceable 2 Month Notice? If so, should the 2 Month Notice be upheld or cancelled?

Background and Evidence

The landlord's agent signed the subject 2 Month Notice on July 27, 2020. The 2 Month Notice has a stated effective date of September 30, 2020 and indicates the reason for ending the tenancy is so that the landlord or landlord's spouse may occupy the rental unit.

The landlord's agent testified that she was informed that the owner, ASN and/or ASN's spouse, intends to occupy the rental unit and that she was authorized to serve the tenant with the 2 Month Notice by ASN.

The landlord's agent testified the 2 Month Notice was served by posting to the door of the rental unit with tape on July 29, 2020.

The tenant's agent testified the 2 Month Notice was found under a flowerpot at the residential property on or about July 28, 2020.

Along with the 2 Month Notice was a letter written on July 28, 2020 by the landlord's agent. The letter states, in part:

I have been informed that the [redacted] do not want to participate in the tenancy any longer after the sale completes on the 30 or 31 of July. Therefore they are going to rescind the notice previously given.

That means I need to do a new notice which will make move out date September 30, 2020.

[name of former owner(s) omitted by me for privacy]

The landlord's agent submitted that she had issued a 2 Month Notice previously, on June 26, 2020, with the authorization of the former owner but then that authorization was rescinded by the former owner's lawyer so she re-issued another 2 Month Notice with the authorization of the current owner, ASN. I noted that the June 26, 2020 2 Month Notice indicates the tenancy was to end because the purchaser of the property, a person with initials YS, intended to occupy the rental unit. The June 26, 2020 2 Month Notice was disputed and a hearing was held on August 11, 2020 (file number provided on the cover page of this decision). During the hearing of August 11, 2020, the former owner's lawyer agreed to cancellation of the June 26, 2020 2 Month Notice.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice to End Tenancy.

Ending a tenancy for landlord's use of property is provided under section 49 of the Act. As provided under section 49 of the Act, a tenancy may be ended by a landlord where the owner, or owner's close family member, intends to occupy the rental unit for at least six months after the tenancy ends.

Section 49(2) provides as follows:

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

I heard that the subject 2 Month notice was issued and served by ASN's agent with the authorization and/or instruction of ASN. I was not provided documentation to demonstrate ASN purchased the property but I proceed to make this decision based on this unopposed testimony.

The 2 Month Notice was issued on July 27, 2020 and served on July 28 or 29, 2020; however, based on the landlord's agent's testimony, ASN did not become the owner of the property until the sale completed on July 30, 2020. As such, I find ASN was not a "landlord" when the 2 Month Notice was issued and served and the landlord's agent did not meet the definition of a "landlord" when the 2 Month Notice was issued and served.

Issuing a 2 Month Notice is done by a landlord who meets the definition of "landlord" under section 1 of the Act.

Under section 1, the definition of landlord is:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

[My emphasis underlined]

In issuing a 2 Month Notice under section 49 of the Act, the person(s) who intend to occupy the rental unit must meet the definition of "landlord" as provided under section 49(1) of the Act which provides:

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest

[My emphasis underlined]

In light of the above, I find ASN was not the landlord or the owner when the 2 Month Notice was served and ASN did not have the standing to issue or have a 2 Month Notice issued by his/her agent. In the absence of standing as an owner/landlord, I find the 2 Month Notice to be unenforceable and I grant the tenant's request that I cancel it with the effect the tenancy continues at this time.

Since the tenant's application was successful, I award the tenant recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution. The tenant is authorized to reduce a subsequent month's rent by \$100.00 to recover this award.

Conclusion

The 2 Month Notice dated July 27, 2020 is unenforceable and it is cancelled with the effect the tenancy continues at this time.

The tenant is awarded recovery of the filing fee and is authorized to deduct \$100.00 from a subsequent month's rent to recover this award.

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: September 30, 2020

Residential Tenancy Branch