



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAYS INN ON THE HARBOUR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FFT

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 16, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The tenant, a witness, the principal of the landlord company, ZB (landlord), and the manager of the building, DW (manager) attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing. The parties were also provided an overview of the hearing process. I have only considered the evidence that was served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires. A witness, JJ (witness) attended the hearing but did not testify.

Neither party raised any concerns regarding the service of documentary evidence. As a result, I find there are no service issues under the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

I have removed respondent AB pursuant to section 64(3)(c) of the Act as the 2 Month Notice was issued by the landlord and the purchaser has since decided not to purchase the rental unit according to the principal.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

A copy of the 2 Month Notice was submitted in evidence. The 2 Month Notice is dated March 16, 2021 and has an effective vacancy date listed as June 1, 2021. The reason stated on page 2 is as follows:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, child; or the parent or child of that individual's spouse).

- The landlord or the landlord's spouse.

And purchaser information for AB was provided under "Purchaser Information".

The principal confirmed that AB has decided not to purchase the rental unit due to the actions of the tenant.

The tenant filed their application on March 26, 2021.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, the Act provides the tenant 15 days to dispute a 2 Month Notice for Landlord's Use of Property. The 2 Month Notice is dated March 16, 2021 and the tenant filed their application on March 26, 2021. I find the tenant filed this application within the required timelines under the Act.

The onus of proof reverts to the landlord to support that the 2 Month Notice is valid.

2 Month Notice issued by landlord – Section 52 of the Act applies in this case and states:

Form and content of notice 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**,
(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

[emphasis added]

In the matter before me, I find the 2 Month Notice was incorrectly completed by the landlord. The 2 Month Notice included conflicting information that stated the landlord or landlord's spouse intends to occupy the rental unit followed by the landlord providing purchaser information for AB.

I find that the 2 Month Notice is invalid because the landlord should have filled out the third box from the top which states:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit.

Due to the 2 Month Notice being incorrectly filled out, I find the landlord has failed to provide sufficient evidence to support the 2 Month Notice was correctly filled out and therefore, **the 2 Month is cancelled** and is of **no force or effect**.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the Act, in the amount of **\$100.00** to recover the cost of \$100.00 filing fee.

I ORDER a one-time rent reduction in the amount of \$100.00 from a future month of rent in full satisfaction of the tenant's recovery of the cost of the filing fee. This order is pursuant to section 62(3) of the Act.

Conclusion

The 2 Month Notice dated March 16, 2021 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The tenant is granted a one-time rent reduction of \$100.00 as full recovery of the filing fee.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 13, 2021

Residential Tenancy Branch