



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on April 1, 2021. Both parties confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail on June 25, 2021. Both parties confirmed the landlord served the tenant with his submitted documentary evidence in person on July 5, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenant argued that the named landlord is not his landlord and does not have the authority to issue a notice to end tenancy.

The tenants argued that his landlord is J.M. the named landlord's father and that he has not had any contact with J.M. despite his efforts since J.M. went to India in January

2021. The tenant stated that no alternative contact information was provided. The named landlord, A.S.M. stated that he is co-owner to the property and is acting as the landlord's agent while his father is away in India. The named landlord confirmed that he did not file any documentary evidence to confirmed that he was acting on J.M.'s behalf. The named landlord stated that he has been acting on behalf of his father for the rental property for the last 1 ½ years as the tenant and J.M. are not on speaking terms for approximately 1 year. The named landlord stated that the tenant was notified of this verbally 1 ½ years ago. The tenant confirmed that he was not on speaking terms with J.M., but at no time was he notified that A.S.M. was acting as the landlord's agent. The tenant also stated that the majority of rent payments have been made to A.S.M.'s spouse at the landlord's door who lives upstairs. Both parties confirmed that A.S.M. lives with his father and spouse upstairs and did receive 1 rent payment at the door.

I accept the affirmed testimony of both parties and find on a balance of probabilities that the named landlord has failed to provide sufficient evidence to satisfy me that he is acting on behalf of the landlord, J.M. Despite the named landlord, A.S.M. arguing that he is a co-owner, no documentary evidence has been presented that he is acting on behalf of the recognized landlord, J.M. or that he is co-owner. I find that with contrasting affirmed testimony of both parties that the named landlord has failed to provide sufficient evidence to satisfy me of his authority. During the hearing an attempt by the named landlord, A.S.M. to contact the landlord, J.M. via telephone was unsuccessful. The named landlord also stated that the landlord did not have access to a telephone. I also find that the receipt of rent payments is not the same as the authority to act as the landlord in issuing a notice to end tenancy. For these reasons, I find that the tenant's application to cancel the 2 month notice dated March 15, 2021 is granted. The tenancy shall continue.

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: July 19, 2021

Residential Tenancy Branch