



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on April 7, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit;
- an order of possession for landlord use of the property; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30AM on July 29, 2021 as a teleconference hearing. The Landlord, the Landlord's Agent C.P, the Purchaser M.C. and the Purchaser's Realtor B.H. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 20 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord, the Landlord's Agent C.P, the Purchaser M.C. and the Purchaser's Realtor B.H. and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant in person on April 15, 2021. B.H. stated that he was in attendance and confirmed having witnessed the service of the above-mentioned documents. Based on the oral submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on April 15, 2021. The Tenant did not submit documentary evidence in response to the Application.

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 based on a Two Month Notice to End Tenancy for Landlord's Use of the Property. As such, the Landlord's request for a monetary order for damage, compensation, or loss, and an order to retain the security deposit are therefore dismissed with leave to reapply.

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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a Two Month Notice for Landlord's Use of the Property (the "Two Month Notice") dated January 30, 2021, pursuant to Section 49 and 55 of the Act?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The Landlord testified that the tenancy began on August 1, 2017. The Tenant is required to pay rent in the amount of \$702.00 which is due to the Landlord on the last day of each month. The Tenant paid a security deposit in the amount of \$337.50 which the Landlord continues to hold. The Landlord stated that the Tenant continues to occupy the rental unit.

The Landlord stated that she sold the rental unit to the purchaser, who asked the Landlord to serve the Two Month Notice to the Tenant as the purchaser requires vacant possession of the rental unit as the purchaser intends to occupy the rental unit.

The Landlord testified that she served the Tenant in person with the Two Month Notice on January 30, 2021 with an effective vacancy date of April 1, 2021. 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 souse).”

The Landlord stated that they made a mistake with respect to the reason for ending the tenancy. The Landlord clarified that she does not intend on occupying the rental unit, instead she sold the rental unit and the purchaser intends on occupying the rental unit once they gain vacant possession. The Landlord stated that along with the Two Month Notice, she provided the Tenant with a copy of the of the purchaser's request to serve the Two Month Notice to the Tenant.

Analysis

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

Section 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 49(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Landlord stated that she served the Tenant in person with the Two Month Notice on January 30, 2021 with an effective vacancy date of April 1, 2021. I find the Two Month

Notice was sufficiently served and that the Tenant is deemed to have been served with the Two Month Notice on January 30, 2021, pursuant to Section 88 and 90 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.

According to subsection 49(9) of the Act, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, I find that the Tenant did not apply to dispute the Two Month Notice and has not yet complied with the Two Month Notice. As the Tenant did not apply to dispute the Two Month Notice in accordance with Section 49(8), I find that they are conclusively presumed to have accepted the end of the tenancy.

In this case, the Landlord has submitted an Application for an Order of Possession based on a One Month Notice to End Tenancy, pursuant to Section 55 of the Act.

I note that Section 55 of the Act states that in order for a Landlord to be granted an order of possession, the Landlord's notice to end tenancy must comply with Section 52 of the Act relating to form and content.

Section 52 of the Act States; 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.*

I find that the Landlord served the Tenant with a One Month Notice and selected the reason for the 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). I find that the Landlord does not intend to occupy the rental unit, rather the Landlord should have selected;

“All the conditions of 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 a close family member intends in good faith to occupy the rental unit ”

I find the One Month Notice does not comply with Section 52 of the *Act* as it does not state the proper grounds for ending the tenancy. In light of the above, I cancel the One Month Notice, dated January 30, 2021. I order that the tenancy continue until ended in accordance with the *Act*.

As the Landlord was not successful in their Application, I find that they are not entitled to the recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed. The Two Month Notice issued by the Landlord dated January 30, 2021 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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 30, 2021

Residential Tenancy Branch