



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 9, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated April 7, 2021;
- an order restricting the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the Act; and
- an order granting the return of the filing fee.

The Tenant, the Landlord, and the Landlord's Agent J.H. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the Act.

Preliminary and Procedural 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 the Two Month Notice. The Tenant's request for an order restricting the

Landlord's right to enter the rental unit, and an order that the Landlord comply with the Act are 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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by the Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

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 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, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2018, that currently rent in the amount of \$800.00 is due to be paid to the Landlord on the first day of each month, and that a security deposit in the amount of \$400.00 was paid to the Landlord.

The Landlord's Agent testified that the Landlord served the Tenant in person with the Two Month Notice on April 8, 2021 with an effective vacancy date of June 30, 2021. The Landlords' 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's Agent stated that he is the son of the Landlord. The Landlord's Agent stated that he intends on occupying the rental unit which is the basement of the rental property. The Landlord's Agent stated that his father (Landlord) lives upstairs. The Landlord's Agent stated that he will be taking part in medical treatments which is meant to last at least 6 months. During this time, the Landlord's Agent intends on moving into the basement to have the support of his family. The Landlord's Agent stated that the Landlord does not intend to re-rent the rental unit.

The Tenant responded by confirming that she received the Two Month Notice on April 8, 2021 and disputed the Two Month Notice on May 9, 2021. The Tenant stated that she was unable to submit her Application to dispute the Two Month Notice within the appropriate timelines as some of her family members had been admitted to the hospital which prevented her from focussing on disputing the Notice. As such, she applied late. The Tenant stated she feels as though the Two Month Notice has been served in bad faith.

Analysis

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's Agent stated that he is the son of the Landlord and that he intends to occupy the rental unit for at least 6 months while he undergoes medical treatment.

The Landlord served the Tenant in person with the Two Month Notice on April 8, 2021, with an effective vacancy date of June 30, 2021. The Tenant confirmed having received the notice on the same date. 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.

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, the Tenant testified that she received the Two Month Notice on April 8, 2021. Therefore, the Tenant had until April 23, 2021 to make an Application for dispute resolution, or is conclusively presumed to have accepted the tenancy has ended on the effective date on the Two Month Notice. I find that the Tenant filed her Application on May 9, 2021 which is outside of the statutory timeline outlined in Section 49(8) of the Act.

As the Tenant did not apply to dispute the Two Month Notice in accordance with Section 49(8), nor did she apply for more time to submit her Application, I dismiss the Tenant's Application to dispute Two Month Notice dated April 7, 2021 without leave to reapply.

Furthermore, I find that the Landlord has provided sufficient evidence to show they intend to use the rental unit for the Landlord's son to occupy for at least 6 months. 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 September 30, 2021 after service on the Tenant 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.

As the Tenant was not successful with his Application the Tenant is not entitled to recover the filing fee from the Landlord.

Conclusion

The Tenant filed her Application late. Therefore, the Tenant's Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply. The Landlord provided sufficient evidence to demonstrate that the Landlord's son intends to occupy the rental unit for at least 6 months. The Landlord is granted an order of possession effective at 1:00PM on September 30, 2021, after service on the Tenant.

The order should be served to 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: September 16, 2021

Residential Tenancy Branch