



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Tenant SW represented tenant FW. Witness for the landlord SV also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The Notice of hearing is dated May 31, 2021 and the amendment to dispute the Notice is dated June 02, 2021. The landlord confirmed receipt of the tenant's package by registered mail containing the Notice of hearing, the amendment and the evidence (the materials) in June 2021. Based on the landlord's testimony I accepted that the tenant served the materials in accordance with section 89(1)(c) of the Act.

The landlord affirmed he served his response evidence in person on September 21, 2021.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The landlord's response evidence is excluded, per Rule of Procedure 3.15.

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 a 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.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenants' application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the testimony and the accepted evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

The tenant affirmed the periodic tenancy started on May 01, 2019. The landlord stated the tenancy started on May 16, 2019. Both parties agreed monthly rent is \$2,650.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,350.00 was collected and the landlord holds it in trust.

Both parties agreed the landlord served the Notice in person to the tenant on May 24, 2021. The tenant amended this application on June 02, 2021 to dispute the Notice and continues to occupy the rental unit.

A copy of the Notice was provided. The Notice is dated May 24, 2021 and the effective date is July 31, 2021. It states: "The rental unit will be occupied by the landlord or the landlord's spouse" and that the landlord's address and the rental unit's address are the same.

The landlord lost his job on January 02, 2021 and listed the rental unit for sale. The landlord was not able to sell the rental unit and decided to sell another property. In May 2021 the landlord decided not to sell the rental unit and served the Notice. The landlord is currently living with his partner and plans to occupy the rental unit when the tenants move out.

The tenant affirmed the 'for sale' sign was only removed on June 10, 2021, one day after the landlord received the materials, and that the rental unit was listed for sale until June 11, 2021. The tenant affirmed the landlord asked to increase rent to \$3,250.00 in February 2021. The landlord affirmed the tenants offered to increase rent to \$3,250.00, as this is the current market rate for the rental unit.

Witness SV affirmed she is the real estate agent that listed the rental unit for sale and on May 19, 2021 the landlord request to cancel the listing. The 'for sale' sign was removed a few weeks later by a contractor. SV affirmed the landlord plans to occupy the

rental unit because the landlord and his partner have children and the rental unit offers enough space for their family.

Analysis

Section 49(8)(a) allows the tenant to dispute the Notice within 15 days after the date the tenant received it. As the tenant confirmed receipt of the Notice on May 24, 2021 and amended this application on June 02, 2021 to dispute the Notice, I find the tenant disputed the Notice within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid.

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.**

(emphasis added)

In reviewing this Notice, I find that the landlord did not indicate his correct address, as the landlord's address and the rental unit's address are the same. Thus, the Notice served does not comply with section 52(e) of the Act. The landlord must complete the Notice properly and I do not find it reasonable to amend the Notice to correct the wrong address provided by the landlord.

Accordingly, I cancel the May 24, 2021 Notice.

I note that I am not making any findings about the merits of the Notice.

As the tenants were successful in this application, pursuant to section 72 of the Act, I authorize the tenants to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment

Conclusion

The May 24, 2021 Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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 24, 2021

Residential Tenancy Branch