



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, FFT

Introduction

On July 15, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property and for an order for the Landlord to make repairs to the rental unit.

The matter was scheduled as a teleconference hearing. The Landlords agent (“the Landlord”) and the Tenant attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and 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.

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, 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 notice to end tenancy. The Tenants other claim is dismissed with leave to reapply.

Issue to be Decided

- Does the Landlord have sufficient reason to end the tenancy?

Background

The Landlord and Tenant both testified that the tenancy began on May 1, 2018 as a one-year fixed term tenancy that was renewed for another year and then continued thereafter on a month-to-month basis. Rent in the amount of \$1,230.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$600.00.

The Tenant is disputing a Two Month Notice to End Tenancy for Landlord's Use of Property ("the Two Month Notice"). The Tenant testified that she received the Two Month Notice on July 15, 2021 via email.

The Tenant testified that the Two Month Notice she received via email is not signed and dated by the Landlord. The Tenant testified that she never gave approval to the Landlord to serve tenancy documents to her using email. The Tenant stated that the Landlord's email prompted her to give her e-signature approval before she was able to view the attached document. The Tenant did not feel comfortable giving the requested approval and contacted the Landlord and requested the Landlord to re-send the document to her using .pdf format.

The Tenant is seeking to cancel the Two Month Notice.

In reply, the Landlord testified that they use e-signature software and that the Two Month Notice sent to the Tenant contained an electronic version of the Landlord's name, signature, and date. The Landlord testified that a second copy of the Two Month Notice was sent to the Tenant and that the second version also contained an e-signature of the Landlord.

The Tenant was asked if she received a second copy of the Two Month Notice and she replied that she did receive it; however, there was no name, signature and date contained within the Two Month Notice. The Tenant provided a copy of the Two Month Notice that is not signed or dated.

The Landlord was asked how he can be sure that the Tenant was able to view the e-signatures on the digital copies of the Two Month Notices that she received, and the

Landlord replied that he is able to view the signature when he opens the email attachment of the Two Month Notice.

Analysis

Section 47 of the *Act* states that a notice to end tenancy must comply with section 52 of the *Act* [*form and content of notice to end tenancy*].

Section 52 of the *Act* states that 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, and*
- (e) when given by a landlord, be in the approved form.*

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

There is insufficient evidence from the Landlord to establish that the Two Month Notice received and opened by the Tenant contained the Landlord's name, signature, and date. I find that the Tenant did not provide e-signature approval which may have caused the Landlord's signatures to not be viewable by the Tenant. The copy of the Two Month notice provided by the Tenant contains no signature or date. In addition, I find that the Tenant did not give the Landlord permission to serve tenancy documents to her using email.

I find that the Landlord did not issue the Tenant with a notice to end tenancy in the proper form as required under section 52 of the *Act*. The Two Month Notice issued by the Landlord is of no force or effect and is dismissed.

If the Landlord wishes to pursue ending the tenancy the Landlord must issue the Tenant another Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant's application to cancel the Landlord's Two Month Notice is successful. The tenancy will continue until ended in accordance with the *Act*.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Landlord did not issue an effective notice to end tenancy as required under section 52 of the Act. The Two Month Notice is of no force or effect and is cancelled.

The tenancy continues 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: November 16, 2021

Residential Tenancy Branch