



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: FFT, CNL
 LL: OPL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on July 29, 2021 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) dated July 16, 2021; and
- an order granting the recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on August 4, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession of possession based on the Two Month Notice; and
- an order granting recovery of the filing fee.

The Tenant, the Landlord, the Landlord’s Counsel M.M, the Landlord’s Daughter K.K., and the Landlord’s Agent A.K. attended the hearing at the appointed date and time.

At the start of the hearing, the Landlord confirmed receipt of the Tenant’s Notice of Hearing and documentary evidence. The Landlord stated that they served the Tenant with their Notice of hearing and some documentary evidence by Registered Mail on August 20, 2021. The Landlord provided the Canada Post Registered Mail receipt in support. The Landlord stated that they served the Tenant with further evidence on November 18, 2021. The Tenant confirmed receipt of the November 18, 2021 evidence package. As such, I find that the November 18, 2021 service of evidence was sufficiently served pursuant to Section 71 of the Act.

I further find that the Landlord provided sufficient evidence to demonstrate that they served the Tenant with the Notice of Hearing and some documentary evidence. As

such, in accordance with Section 89 and 90 of the Act, I find that the Tenant is deemed to have been served with these documents five days later, on August 25, 2021.

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 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, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?
4. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Tenant stated that he moved into the rental unit on July 24, 2014. The Landlord stated that the tenancy began on August 1, 2014. The parties agreed that the Tenant pays rent in the amount of \$5,495.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$2,500.00 which the Landlord continues to hold.

The Landlord's Daughter testified that she served the Tenant in person with the Two Month Notice on July 16, 2021, with an effective vacancy date of September 30, 2021. The Tenant confirmed having received the Two Month Notice on the same day. 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 spouse)."

The Landlord Daughter stated that she currently resides with her parents in a two-bedroom apartment. The Landlord's Daughter stated she served the Two Month Notice to the Tenant as she intends on moving into the rental unit with her husband where they will reside for at least 6 months. The Landlord's Daughter stated that she is needing more independence and space to be able to work from home without interruption. As such, the Landlord is seeking to end the tenancy for this purpose.

The Tenant stated that he has experienced some recent health issues, therefore, is unable to move out of the rental unit. The Tenant provided a Doctors note and medical assessment in support. The Tenant stated that the Landlord has other residences.

Analysis

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

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 intent is for their Daughter to occupy the rental unit.

The Landlord served the Tenant in person with the Two Month Notice on July 16, 2021, with an effective vacancy date of September 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. The Tenant received the Two Month Notice on July 16, 2021 and filed the Application on July 29, 2021. Therefore, the Tenant is within the 15 day time limit under the Act.

The Landlord Daughter testified that she and her husband intend to occupy the rental unit, as the two-bedroom apartment they currently share with her parents is too small. The Landlord's Daughter stated that she is seeking more independence and space in order to work from home without any interruption. As such, the Landlord is seeking to gain vacant possession of the rental unit for their Daughter to occupy for at least 6 months.

While the Tenant stated that he is unable to move out of the rental unit due to health reasons, I find that this is not sufficient reasoning to cancel the Two Month Notice. Instead, I find that the Landlord has provided sufficient evidence to demonstrate that their Daughter is more likely than not going to occupy the rental unit as stated on the Two Month Notice.

As such, I dismiss the Tenant's Application to cancel the Two Month Notice, without leave to reapply. 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. As the effective date has now passed, I find that the Landlord is entitled to an order of possession **effective two (2) Days** after service to 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 Landlord was successful with their Application, I find they are entitled to recover the \$100.00 filing fee. I order that the Landlord deduct \$100.00 from the Tenant's security deposit.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply. The Landlord is granted an order of possession effective on Two (2) Days after service to the Tenant. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is permitted to deduct \$100.00 from the Tenant's security deposit which represents the return of 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: November 30, 2021

Residential Tenancy Branch