



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

The hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on July 30, 2021 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch on July 15, 2021 was sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

As the aforementioned documents were properly served to the Landlord, the hearing proceeded in the absence of the Landlord and the July 15th evidence package was accepted as evidence for these proceedings.

On November 02, 2021 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that these documents were posted on the Landlord's door on November 02, 2021.

Section 90 of the *Act* stipulates that posted documents are deemed to be received on the third day after they are posted. I therefore find that the evidence the Tenant posted

on the Landlord's door on November 02, 2021 are deemed received on November 05, 2021.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, the last day for the Tenant to file and serve evidence as part of Application for Dispute Resolution was November 01, 2021.

As the Tenant's evidence that was posted on the Landlord's door is deemed to have been received on November 05, 2021, I find it was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure. As such, this evidence was not accepted as evidence for these proceedings.

Preliminary Matter #1

At the outset of the hearing the Tenant advised me that he had vacated the rental unit on August 31, 2021.

The Tenant was asked if he would like to withdraw his application to cancel a Two Month Notice to End Tenancy for Landlord's Use, given that the rental unit has been vacated. The Tenant stated that he did not wish to withdraw his Application for Dispute Resolution.

As the Tenant did not wish to withdraw his Application for Dispute Resolution, the hearing proceeded.

Preliminary Matter #2

Tenant stated that he has applied for compensation because the Landlord assaulted and harassed him.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that a claim is limited to what is stated in the Application for Dispute Resolution. The Tenant was advised that he did not claim for financial compensation in his Application for Dispute Resolution and, as such, I would not be determining if he is entitled to compensation for alleged harassment/assault.

Rules 4.1 and 4.6 of the Residential Tenancy Branch Rules of Procedure require that an applicant amend an Application for Dispute Resolution by filing an Amendment to an Application for Dispute Resolution with the Residential Tenancy Branch and by serving that Amendment to the other party. As the Tenant did not properly amend the Application for Dispute Resolution to include a claim for loss of quiet enjoyment, I will not be considering that claim at these proceedings.

I note that the Tenant submitted evidence to the Residential Tenancy Branch which appears to be in support of a claim for loss of quiet enjoyment. I find, however, that service of this evidence would not serve to properly notify the Landlord of a claim for loss of quiet enjoyment even if that evidence had been served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, as it was not accompanied by an Amendment to an Application for Dispute Resolution.

The Tenant retains the right to file another Application for Dispute Resolution in which he claims compensation for loss of quiet enjoyment.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

On July 15, 2021 the Tenant filed this Application for Dispute Resolution, in which he applied to cancel a Two Month Notice to End Tenancy for Landlord's Use for Landlord's Use of Property.

The Two Month Notice to End Tenancy for Landlord's Use of Property, which was submitted in evidence, is dated June 27, 2021. The Notice declares that the Tenant must vacate the rental unit by August 31, 2021.

The Tenant stated that he moved out of the rental unit on August 31, 2021.

Analysis

As the Tenant vacated the rental unit on August 31, 2021, which is the effective date of the Two Month Notice to End Tenancy for Landlord's Use and is approximately six months after he filed this Application for Dispute Resolution, I find that the Landlord effectively abandoned his application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

As the rental unit has been vacated and the Tenant effectively abandoned the application to cancel the Two Month Notice to End Tenancy for Landlord's Use, I will not be determining whether the Two Month Notice to End Tenancy for Landlord's Use should be set aside.

As the rental unit has been vacated and the Tenant effectively abandoned the application to cancel the Two Month Notice to End Tenancy for Landlord's Use, I find that the Tenant is not entitled to recover the fee paid to file this Application for Dispute Resolution.

Conclusion

The Tenant has abandoned his application to cancel this Two Month Notice to End Tenancy for Landlord's Use.

The Tenant's application to recover the fee for filing this Application for Dispute Resolution is dismissed, without leave to reapply.

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