



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, LAT, MNRT, DRI, LRE

Introduction

On October 1, 2021, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a Monetary Order for the cost of emergency repairs pursuant to Section 33 of the *Act*, seeking to dispute a rent increase pursuant to Section 41 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, and seeking authorization to change the locks pursuant to Section 31 of the *Act*.

Both Tenants attended the hearing. The Landlord attended the hearing with P.S. attending as counsel for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of P.S., provided a solemn affirmation.

Tenant E.W. advised that he served the Notice of Hearing package to the Landlord by registered mail on or around October 7, 2021, and the Landlord confirmed that he received this package. Based on this undisputed testimony and in accordance with

Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing package.

E.W. then testified that he served his evidence to the Landlord by including it in the Notice of Hearing package; however, both the Landlord and P.S. stated that there was no evidence contained within this package. When E.W. was questioned about whether he printed his evidence and included it in the Notice of Hearing package, he stated that he did so “to the best of [his] abilities” and that his evidence was not relevant, in any event. It is not clear to me what “to the best of his abilities” means in this instance. Either he did print these documents off and included them, or he did not. This ambiguity causes me to doubt that this evidence was actually printed and served. As such, I have excluded this evidence and will not consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenants by posting it to the door of the dispute address on January 6 and 15, 2021. This was posted at this address because this was the service address noted in the Tenants’ Application and was the only service address available. E.W. stated that he did not pick this up. As this evidence appears to have been served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The parties were informed that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord’s Notice, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; 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 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 complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that a co-tenancy started on or around April 2020, that rent was established at an amount of \$500.00 per month, and that it was due on the first day of each month. Neither a security deposit nor a pet damage deposit was paid. A written tenancy agreement was not created as this tenancy commenced as an informal verbal agreement.

The Landlord advised that the Notice was served to the Tenant Z.S. in person on September 15, 2021, and she confirmed that she received this Notice on that date. She testified that she then served this Notice to E.W. on or around that date as well. E.W. confirmed that there was some interaction with Z.S. on or around that date where he alleged that “papers were thrown” at him; however, he stated that he did not look at them. The Notice indicated that the effective end date of the tenancy was November 15, 2021.

In addition, the Landlord advised that a Mutual Agreement to End Tenancy was signed with Z.S. on October 19, 2021, that effectively ended the tenancy on November 30, 2021.

Z.S. confirmed that she signed this mutual agreement to end the tenancy.

While he was unsure of the content of the papers that were provided to him by Z.S. on or around September 15, 2021, E.W. advised that he disputed the Notice after he received it on the door on September 20, 2021. He made numerous submissions on the contentious nature of his relationship, with Z.S., that had broken down and resulted in animosity between the parties. However, this was not relevant to the issues at hand.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to Z.S., I am satisfied based on the consistent and undisputed testimony that the Tenants entered the tenancy as co-tenants and that the Landlord served this Notice to Z.S. on September 15, 2021. Furthermore, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that Policy Guideline # 13 outlines that co-tenants are jointly and severally liable for the tenancy. What this mean is that one of the co-tenants could end the tenancy in accordance with the *Act* and this would result in the tenancy ending for both co-tenants. Moreover, the Landlord can serve one of the co-tenants a notice to end tenancy and this would effectively be served on both co-tenants.

Given that all parties agreed that this was a co-tenancy, as the consistent and undisputed evidence was that the Landlord personally served Z.S. the Notice on September 15, 2021, I am satisfied that this Notice was received on that date.

According to Section 49(8)(a) of the *Act*, the co-tenants have 15 days to dispute this Notice, and Section 49(9) of the *Act* states that *"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."* I find it important to note that this information is provided on the first page of the Notice as well.

As one of the co-tenants was served the Notice on September 15, 2021, the fifteenth day to dispute the Notice fell on September 30, 2021. As such, either of the co-tenants must have made this Application by this date at the latest. However, the undisputed evidence is that E.W. made this Application on October 1, 2021. While the co-tenants were late in making this Application, no request for an extension of time to make the Application was made.

Consequently, as I am satisfied that the Notice is valid pursuant to Section 52 of the *Act* and that neither co-tenant disputed the Notice within the required time frame, I find that the co-tenants are conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the co-tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. However, as the tenancy had already ended pursuant to one of the co-tenants signing a Mutual Agreement to End the Tenancy effective for November 30, 2021, I do not find it necessary to issue said Order of Possession.

Conclusion

Based on the above, I dismiss the co-tenants' Application for Dispute Resolution with respect to the Notice in its entirety. The claims with respect to claims for monetary compensation have been severed.

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: January 26, 2022

Residential Tenancy Branch