



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice);
- an order extending the time to file an application disputing the Notice issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- to recover the cost of the filing fee.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Neither party presented any issue with regard to service of the tenant's application or the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

- Should the Notice be cancelled?
- Is the tenant entitled to an order requiring the landlord to comply with the Act and regulation?
- Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The tenant submitted that the tenancy began on May 15, 2013. Filed in evidence was a copy of the tenancy agreement.

The tenant submitted that he is seeking cancellation of a Notice, which he filed in evidence.

The Notice filed in evidence was on the standard RTB form used for the purpose of ending a tenancy when a landlord claims it is for use of the residential property.

The Notice was signed by the landlord, but not dated, but listed an effective move-out date of November 1, 2021. The reason listed on the Notice stated that the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The landlord said that he marked that section of the Notice as his family members also looked after the property. Ultimately, the landlord confirmed that a family corporation was not involved and that he was not incorporated.

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, the tenant stated "WRONGFULL EVICTION", with nothing further.

As to the tenant's request for an order extending the time to file an application disputing the Notice issued by the landlord, the tenant submitted that he was out of town and was not sure when the Notice was delivered by registered mail.

The landlord's evidence included a document he termed a "10 Day Notice". It is noted that the form was actually a One Month Notice to End Tenancy for Cause. The Notice was dated February 7, 2022, for a move-out date of February 12, 2022.

This Notice was not included in the dispute here and there was no evidence provided as to whether it was served on the tenant or why it was dated on a future date.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, and policy, on the balance of probabilities.

When a tenant disputes a Two Month Notice, the landlord bears the onus to prove that the Notice is valid, was issued in good faith, and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled.

Section 49 (4) states a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Act defines a family corporation as a corporation in which all the voting shares are owned by one individual or one individual plus one or more of that individuals' brother, sister, or close family members.

I have reviewed the Notice and I find the landlord submitted insufficient evidence to prove that the named landlord, an individual, is a family corporation. As proof, I would expect a document with the name of the business to show a designation of "Limited", "Limitee", "Incorporated", "Incorporee", or "Corporation". In this case, it did not.

For these reasons, I find the Two Month Notice is invalid under the Act due to insufficient evidence that the issuer was a family corporation. Therefore, I find it unnecessary to consider the landlord's good faith intention in issuing this Notice.

As a result of the above, I **order** that the Notice for an effective move-out date of November 1, 2021, is cancelled, and it is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

As to the tenant's request for more time to file his application in dispute, I find it was not necessary to consider this request. The Notice was not dated and there was insufficient evidence of when it was served.

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, I **dismiss** this part of the tenant's application **without leave to reapply**, due to insufficient evidence. The tenant did not specify or give details as to what he meant by this request, as his only submission was "WRONGFULL EVICTION".

As the tenant was successful in his application to cancel the Notice, I award him recovery of the filing fee in the amount of \$100. In full satisfaction of this award, I authorize the tenant to deduct \$100 from the next or a future months' rent payment.

The tenant is directed to notify the landlord when this deduction is made.

Conclusion

The tenant's application seeking cancellation of the Two Month Notice at issue here and recovery of their filing fee has been granted.

The Two Month Notice, which listed an effective move-out date of November 1, 2021, is cancelled.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 31, 2022

Residential Tenancy Branch