



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, LRE

Introduction

This hearing was convened by way of conference call in response to two Applications for Dispute Resolution filed by the Tenant on September 28, 2021 and October 08, 2021.

The Tenant applied as follows in their first application:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property
- For a repair order
- To suspend or set conditions on the Landlord's right to enter the rental unit

The Tenant applied as follows in their second application:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Tenant confirmed both of their applications for dispute resolution relate to the same Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenant sought to withdraw the first application. The Landlord testified that they did not receive the hearing package for the first application and the Tenant testified that they did not serve the hearing package for the first application on the Landlord. Given the service issue, the first application is dismissed with leave to re-apply. However, the dispute of the Two Month Notice to End Tenancy for Landlord's Use of Property dated September 25, 2021

(the "Notice") is dealt with in this decision because it is also the subject matter of the second application and therefore the Tenant cannot re-apply to dispute the Notice.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package for the second application as well as the Tenant's evidence.

The Landlord confirmed receipt of the hearing package for the Tenant's second application. The Landlord confirmed receipt of the Tenant's evidence other than an email with a time stamp of 9:23. The Tenant testified that they do not think they served the email on the Landlord. I told the Tenant pursuant to rule 3.17 of the Rules, that I cannot consider evidence not served on the other party and the Tenant said this is fine and that the email will not make a difference anyway. Given this, I did not go into service of the email further.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The agreement is between the co-landlord and the Tenant. The tenancy started June 15, 2015, was for a fixed term of three years and then became a month-to-month tenancy. Rent is due on the first day of each month.

The Notice was submitted as evidence. The Tenant did not take issue with the form or content of the Notice when asked. The grounds for the Notice are that the rental unit will be occupied by the Landlord.

The parties agreed the Notice was served on the Tenant in person September 26, 2021.

The Landlord testified as follows. They intend to move into the rental unit. Them and the co-landlord are going through personal issues and want to make sure they are in a sustainable situation that is good for their children. They plan to move into the rental unit which is a laneway house.

The Landlord sought an Order of Possession effective February 28, 2022.

The Tenant testified that they were confused because the Landlord issued the Notice but their tenancy agreement is with the co-landlord. The Tenant acknowledged the Landlord gave them their tenancy agreement at the start of the tenancy. The Tenant said they agree the Landlord intends to move into the rental unit they just need more time to move out.

Analysis

I do not find it problematic that the Landlord issued the Notice rather than the co-landlord named on the written tenancy agreement because I accept that the Landlord is a co-landlord in relation to the tenancy.

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I find the Tenant received the Notice September 26, 2021 given the testimony of the parties. The second application was filed October 08, 2021, within time.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I accept that the Landlord intends to move into the rental unit and that this is the reason for the Notice because the Landlord testified that this is the case and the Tenant agreed that the Landlord intends to move into the rental unit. In my view, the Tenant did not dispute the validity of the Notice, the Tenant simply wanted more time to move out of

the rental unit. Given the testimony of the parties, I find the Landlord has proven the grounds for the Notice.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*. I also note that the Tenant did not raise an issue with the form or content of the Notice when asked.

The effective date of the Notice complies with section 49(2)(a) of the *Act*.

Given the above, I find the Notice is valid and uphold the Notice. Given this, I dismiss the dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found the Notice complies with section 52 of the *Act* and have dismissed the Tenant's dispute of the Notice. The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2022.

I acknowledge that the Tenant sought more time to move out of the rental unit; however, the Landlord has proven that the Notice is valid and therefore is entitled to an Order of Possession as early as two (2) days after service on the Tenant. However, the Landlord has not asked for a two-day Order of Possession and has asked for an Order of Possession effective at the end of February. The Landlord is entitled to this and I will not consider extending the effective date beyond that requested by the Landlord.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on February 28, 2022. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 08, 2022

Residential Tenancy Branch