



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, LRE, LAT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Tenant applied on December 3, 2021 for:

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, dated November 12, 2021 (the Two Month Notice),
- an order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- compensation for monetary loss or other money owed;
- an order to suspend or set conditions on the Landlord's right to enter the rental unit or site; and
- authorization to change the locks to the rental unit.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified he served his Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlord by courier on December 18, 2021. The Landlord confirmed he received the documents around December 20, 2021. I find the Tenant sufficiently served the Landlord on December 18, 2021, in accordance with section 71 of the Act, and that the Landlord received the documents on December 20, 2021. The Tenant testified he served additional evidence on the Landlord on February 10, 2022. As the Landlord confirmed he received the Tenant's additional evidence and had sufficient time to review it prior to the hearing, I find the Tenant sufficiently served the Landlord with his additional evidence.

The Landlord testified that he served his responsive evidence on the Tenant by sending it to the Tenant's address for service by registered mail on January 11, 2022, and provided a tracking number as proof. The tracking number is noted on the cover page of this decision. The Landlord testified that he also left a copy of his evidence at the Tenant's door on February 5, 2022. The Tenant testified he did not receive the Landlord's evidence. Having checked the tracking number, I find the Landlord served the Tenant in accordance with section 88 of the Act, and I informed the parties I would accept the Landlord's evidence.

Preliminary Issues

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they were not related to the central issue of whether the tenancy will continue, I dismissed the Tenant's claims, with the exception of his claim to dispute the Two Month Notice.

Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the Two Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars of the tenancy. The Tenant moved in around 2010, and the current Landlord took over the tenancy in 2017. Rent is \$700.00, due on the first of the month, and the Tenant paid a security deposit of \$325.00 which the Landlord still holds.

The Landlord testified that he served the Tenant with the Two Month Notice on November 13, 2021 by posting it on the door, and submitted as evidence a proof of service form, signed by a witness, and a photo of the posted Notice. The Landlord testified he served the Two Month Notice on the Tenant a second time, on November 27, 2021, by posting it to the door. The Landlord testified he served an unsigned copy of

the Two Month Notice on the Tenant about a week later, by text message. The Landlord testified that the previous two copies of the Two Month Notice served on the Tenant had been signed.

The Tenant testified that the Two Month Notice he received was not signed.

Although the Tenant testified he did not receive the Two Month Notice until late December, I note that he applied to dispute the Notice on December 3, 2021.

A copy of the Two Month Notice was submitted as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. The reason indicated for the Two Month Notice is: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The Landlord testified that he served the Two Month Notice on the Tenant at the request of the buyer, and submitted as evidence a copy of a document entitled "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession," which is electronically signed by the buyers and states that all conditions on which the purchase and sale of the property have been satisfied or waived.

The Landlord testified he is seeking an order of possession for the end of February 2022.

Analysis

Based on the testimony and submissions of the Landlord, I find the Landlord served the Tenant the Two Month Notice by posting it to the door on November 13, 2021, in accordance with section 88 of the Act, and deem the Two Month Notice received by the Tenant on November 16, 2021 in accordance with section 90 of the Act.

As the Two Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52 of the Act.

Though the Tenant testified that the Two Month Notice he received was not signed, he did not raise a question about the identity of the landlord issuing it. Also, the Landlord testified that the first two copies of the Two Month Notice served on the Tenant were signed, and only the third, sent by text, was not.

Section 49(8) of the Act states that a tenant who wishes to dispute a Two Month Notice must do so within 15 days after receipt.

The Tenant's application to cancel the Two Month Notice was received by the Residential Tenancy Branch on December 3, 2021, 17 days after the Two Month Notice is deemed received by the Tenant, on November 16, 2021.

Pursuant to section 49(9) of the Act, failure to dispute a Two Month Notice within 15 days after receipt results in the conclusive presumption that the tenant has accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Therefore, I find that the Tenant's application was made late, contrary to section 49(8) of the Act, and that the Tenant is conclusively presumed to have accepted that the tenancy ended on January 31, 2022, the effective date of the Two Month Notice.

I find the Landlord is entitled to an order of possession.

Conclusion

The Tenant's application is dismissed.

The tenancy will end February 28, 2022, at 1:00 p.m.

The Landlord is granted an order of possession which will be effective February 28, 2022, at 1:00 p.m.

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: February 15, 2022

Residential Tenancy Branch