



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Applicant applied on October 6, 2021 for:

- an order to cancel a Two Month Notice to End Tenancy, dated September 30, 2021;
- an order for the Landlord to comply with the Act, regulation, and/or tenancy agreement; and
- the filing fee.

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 Applicant testified she served the Notice of Dispute Resolution Proceeding (NDRP) and her evidence on the Respondent by registered mail on October 15, 2021; the Respondent confirmed he received the documents. I find the Applicant served the Respondent in accordance with section 89 of the Act.

The Respondent testified he served his responsive evidence on the Applicant by registered mail on an unknown date; the Applicant confirmed she received it “two or three weeks ago,” in any event, in sufficient time to review it prior to the hearing. I find the Respondent served the Applicant in accordance with section 88 of the Act.

Preliminary Matters

Landlord Status

As the Respondent's evidence contained one or more references to him subletting to the Applicant, I began the hearing getting a better understanding of the living arrangement and business relationship between the parties.

The Respondent testified that he is a landlord of the subject rental unit, and submitted as evidence a signed letter from the owners of the home, dated January 13, 2022, which "authorizes the present tenant, [the Respondent] at [rental address], to sublet the basement at the aforementioned domicile. He is empowered to choose tenants, collect monies and in all ways act as the landlord of the basement since September 2007."

The definition of "landlord" in the Act states:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Based on the Respondent's testimony and evidence, which refer to the Respondent carrying out the duties of a landlord on behalf of the owners, I am satisfied that a landlord-tenant relationship exists between the Respondent and the Applicant. So, for the remainder of the decision I will refer to the Respondent as the Landlord and the Applicant as the Tenant.

Unrelated Issues

The RTB Rule 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 it is not related to the central issue of whether the tenancy will continue, I dismissed, with leave to reapply, the Tenant's application for an order for the Landlord to comply with the Act, regulation, and/or the tenancy agreement.

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?
- 3) Is the Tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the periodic tenancy. It began April 29, 2013; rent is \$925.00 a month, due on the last day of the month for the following month; and the Tenant paid a security deposit of \$462.50, which the Landlord still holds.

The Landlord testified he served a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenant in person on September 30, 2021 (the Landlord's Notice), which the Tenant confirmed.

The Landlord's Notice is a signed type-written document dated September 30, 2021, gives the address of the rental unit, states the effective date of the Notice, and states the grounds for ending the tenancy. However, the Landlord's Notice is not in the approved form as required under section 52 of the Act, and is missing information from the Residential Tenancy Branch Two Month Notice to End Tenancy For Landlord's Use of Property form, such as information on how to dispute the Notice, and how long the Tenant has to dispute the Notice.

Analysis

As the Landlord's Notice is not in the approved form as required under section 52 of the Act, and is missing critical information from the Residential Tenancy Branch Two Month Notice to End Tenancy For Landlord's Use of Property form, such as information on how to dispute the Notice, and how long the Tenant has to dispute the Notice, I find the Landlord's Notice is without force or effect.

Therefore, I find the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in her application, I order the Landlord to pay the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Landlord's Notice is without force or effect. The tenancy will continue until it is ended in accordance with the Act.

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 08, 2022

Residential Tenancy Branch