



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DFH Real Estate Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Section 49 of the Act;
2. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, ML, and the Tenant, JL, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Two Month Notice by email on September 30, 2021. The Tenant confirmed she has provided an email address for service and confirmed receipt of the Two Month Notice. I find that the Two Month Notice was deemed served on the Tenant on October 3, 2021 pursuant to Sections 43(1) and 44 of the Residential Tenancy Regulation (the "regulation").

The Tenant served the Notice of Dispute Resolution Proceeding package and evidence for this hearing to the Landlord via Canada Post registered mail on October 18, 2021 (the “NoDRP package”). JL referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package on October 19, 2021. I find that the Landlord was served with the NoDRP package on October 19, 2021 in accordance with Section 89(1)(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s Two Month Notice?
2. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties agree that this tenancy began as a fixed term tenancy on February 1, 2019. The fixed term ended on January 31, 2020 and continued as a month-to-month tenancy. Monthly rent is \$3,000.00 payable on the first day of each month. A security deposit of \$1,500.00 was collected at the start of the tenancy and is still held by the Landlord.

At the outset of the hearing, the Landlord’s Agent advised that the Landlord has revoked the Two Month Notice. The date on the ‘Notice of Revocation’ was January 28, 2021, but the Landlord’s Agent corrected this saying it was to be January 28, 2022.

The Tenant holds her business in the rental unit. When she first received the Two Month Notice she sought compensation from the Landlord. Now that the Two Month Notice is revoked, she feels stressed from the whole ordeal. She wants the Landlord to be honest in their dealings with her.

The Landlord is no longer wanting the rental unit for Landlord’s use.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Based on the Landlord's Agent's testimony, the Two Month Notice is revoked. I find, due to the revocation, the Landlord's Two Month Notice is canceled and the tenancy shall continue until it is ended in accordance with the Act.

The Tenant claimed for an Order for the Landlord to comply with the Act, regulation and the tenancy agreement. This was based on asking the Landlord to be honest in their dealings with her. Section 28 of the Act specifies that the Tenant's has rights to quiet enjoyment which includes reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit, and use of common areas for reasonable and lawful purposes, free from significant interference. I cannot make an Order for the Landlord to be honest, hence, I dismiss this part of the Tenant's application without leave to re-apply.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover her application filing fee.

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: March 01, 2022

Residential Tenancy Branch