



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNL

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:13 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that in September 2021 the tenant was served with a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, not a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant's application for dispute resolution states:

....They want to evict me, the longest tenant in the apartment building in order to "convert the rental unit for use by a caretaker, manager or superintendent of the residential property"

The above quoted language is from a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, not a Two Month Notice for Landlord's Use of Property. I find, on a balance of probabilities, that the tenant's application for dispute resolution is seeking to cancel a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, not a Two Month Notice to End Tenancy for Landlord's Use of Property. Pursuant to section 64 of the *Act*, I amend the tenant's application to seek to cancel a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, not a Two Month Notice to End Tenancy for Landlord's Use of Property.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.

Section 55(1) and section 55(1.1) of the *Act* state:

- 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.

Neither party entered a copy of the Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit into evidence. I therefore am not able to determine if the Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit meets the form and content requirements of section 52 of the *Act*.

Pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, when a tenant disputes a notice to end tenancy, the landlord must prove that the notice to end tenancy meets the form and content requirements of the *Act*. Since the landlord did not provide a copy of the Four Month Notice to End Tenancy for Demolition or Conversion

of a Rental Unit, I am unable to award the landlord with an Order of Possession pursuant to section 55(1.1) of the *Act* because I cannot determine if the section 52 requirements have been met.

The landlord remains at liberty to file an application for an Order of Possession pursuant to the Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit.

Conclusion

The tenant's application for dispute resolution is dismissed without leave to reapply.

The landlord remains at liberty to file an application for an Order of Possession pursuant to the Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit.

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: March 07, 2022

Residential Tenancy Branch