Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNL, 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 Sections 49 and 62 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 Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. 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 Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that they were not recording this dispute resolution hearing.

The Tenant testified that the Two Month Notice was served by sliding the notice under their door. Placing a copy of the document under the door is not recognized by the Legislation. Pursuant to Section 88 of the Act, the Two Month Notice, that is required or

permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

> *(a) by leaving a copy with the person;*
>
> *(b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
>
> *(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
>
> *(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
>
> *(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
>
> *(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
>
> *(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
>
> *(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*
>
> *(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
>
> *(j) by any other means of service provided for in the regulations.*

As the Landlord did not serve the Tenant in one of the above ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 (CanLII) at para. 65. I find that service was not effected and it would be administratively unfair to proceed on

the Landlord's notice against the Tenant. I cancel the Landlord's Two Month Notice because of improper service.

The Tenant confirmed that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 18, 2021 (the "NoDRP package"). I find that the Landlord was sufficiently served with the NoDRP package on November 18, 2021 in accordance with Section 71(2)(b) 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 Tenant confirmed that this periodic tenancy began in February 2017. Monthly rent is $1,000.00 payable on the first day of each month. The Tenant is also responsible for 50 percent of the utilities. A security deposit of $500.00 was collected at the start of the tenancy.

The Tenant seeks to cancel the Two Month Notice.

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.

The Landlord did not attend this hearing, so the hearing was conducted pursuant to RTB Rules of Procedure **7.3 - Consequences of not attending the hearing** which states:

> *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.*

The Landlord did not attend this hearing to provide evidence on why they need this tenancy to end. I also found that service of the Two Month Notice was not effected and cancelled the notice. Due to the non-appearance of the Landlord and the lack of evidence from them, I find that they have not proven on a balance of probabilities that this tenancy needs to end, accordingly, I grant the Tenant's application to cancel the Landlord's Two Month Notice. The tenancy shall continue until it is ended in accordance with the Act.

The Tenant did not provide evidence on their claim seeking an Order for the Landlord to comply with the Act, regulations and tenancy agreement. I dismiss this part of the Tenant's application with leave to re-apply.

As the Tenant is successful in their claim, they are 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 Two Month Notice is granted.

The Tenant may withhold $100.00 from next month's rent to recover his 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