



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNQ**

Introduction

This hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for an order for cancellation of a Two Month Notice to End Tenancy dated November 2, 2021 ("2 Month Notice") because the Tenant does not Qualify for the Subsidized Rental Unit pursuant to section 49.1 of the Act.

An agent for the Landlord ("MT") and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Landlord with the Notice of Dispute Resolution Proceeding ("NDRP") by email on November 24, 2021. MT stated that, although the Landlord had not agreed to accept service of documents by email, she acknowledged the Landlord had received the NDRP. I find the NDRP was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

The Tenant stated she served the Landlord with her evidence by email on November 24, 2021. MT stated that, although the Landlord had not agreed to accept service of documents by email, she acknowledged the Landlord had received the Tenant's evidence on November 25, 2021. I find the NDRP was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

MT stated the Landlord served evidence on the Tenant by registered mail on February 9, 2022. MT submitted the tracking number for the registered mail package on the Tenant. I find the Tenant with served with the Landlord's evidence in accordance with section 88 of the Act.

Preliminary Matter – Amendment to Change Respondent

MT testified that, although she is named in the Tenant's application as the Landlord, she is not the Landlord. MT provided the name of the Landlord ("CM") and referred to the 2 Month Notice which stated CM is the Landlord. MT requested the Tenant's application be amended to remove MT as a respondent and to add CM as a respondent.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states ("RoP"):

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As MT's request could reasonably be anticipated by the Tenant, I amended the Tenant's application to add CM as the respondent and to remove MT as a respondent pursuant to Rule 4.2.

Preliminary Matter – Removal of Infants as Applicants

At the outset of the hearing, I noted that, based on the information provided in the tenancy agreement, it appeared that two of the applicants were infant children of the Tenant. The Tenant confirmed that two of the applicants were her infant children. The Tenant requested that I remove them as applicants. As the Tenant's request could be reasonably anticipated by the Landlord, I amended the Tenant's application to remove the two infants as applicants pursuant to Rule 4.2.

Preliminary Matter – Cancellation of 1 Month Notice by Landlord

MT advised that the Landlord made an application ("Prior Application"), by direct request, to seek an Order of Possession and a monetary order for unpaid rent. The arbitrator ("Previous Arbitrator") who reviewed the Prior Application issued a decision ("Previous Decision") and granted an Order of Possession and Monetary Order to the Landlord on February 24, 2022. I noted the Tenant had made an Application for a Review Consideration of the Previous Decision and orders and, after consideration by

an arbitrator, the Tenant's Application for a Review Consideration was dismissed on March 7, 2022. I noted that, as a result of the dismissal of the Tenant's Application for a Review Consideration, even if I were to make a determination that the 1 Month Notice was to be cancelled, the Order of Possession and Monetary Order issued by the Previous Arbitrator are in effect and enforceable by the Landlord.

The Tenant abruptly disconnected from the conference. As the Landlord is in possession of an enforceable Order of Possession and Monetary Order, MT withdrew the Landlord's 1 Month Notice. Based on the foregoing, I dismiss the Tenant's application without leave to reapply.

Conclusion

The Tenant's application is dismissed as the Landlord has cancelled the 1 Month Notice. I make no factual findings about the merits of the Tenant's application.

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 9, 2022

Residential Tenancy Branch