



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

Introduction

The hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 16, 2022 ("2 Month Notice") pursuant to sections 49 and 55; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72(1).

The Landlord did not attend this hearing. I left the teleconference hearing connection open while the phone system was monitored for the entire hearing to enable the Landlord to call into this teleconference hearing which scheduled for 11:00 am. The two Tenants ("HB" and "JO") attended the hearing and were 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 Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that HB, JO and I were the only ones who had called into this teleconference until the hearing ended at 11:16 am.

The undisputed testimony of HB was he served that the Landlord in person with the NDRP on February 11, 2022. I find the NDRP was served on the Landlord in accordance with section 89 of the Act.

The undisputed testimony of HB was he served the Tenants evidence on the Landlord in-person on either February 12 or 13, 2022. I find the Tenants served their evidence on the Landlord in accordance with section 88 of the Act.

Preliminary Matter – Landlord's Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though the Tenants made the Application, the Landlord bears the evidentiary burden to prove that the 2 Month Notice was issued for valid reasons. As the Landlord failed to attend the hearing, I find that the Landlord has failed to discharge this evidentiary burden. Accordingly, I cannot find that the 2 Month Notice is valid.

As such, I grant the Application and cancel the 2 Month Notice. The tenancy will continue until ended in accordance with the Act.

Preliminary Matter – Reimbursement of Tenants' Costs of Application

As the Tenants have been successful in the Application, I grant the Tenants recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenants are allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenants.

Conclusion:

I cancel the 2 Month Notice and the tenancy will continue until ended in accordance with the Act.

The Landlord is ordered to reimburse the filing fee of the Application. The Tenants are allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made.

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: April 29, 2022

Residential Tenancy Branch