



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPL, FFT, FFL

Introduction

This hearing was set to deal with cross applications. The tenant filed to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The landlords filed to obtain an Order of Possession based on the same 2 Month Notice.

Only the landlord's agent appeared for the hearing. The teleconference call was left open for 30 minutes and during that time there was no appearance on part of the tenant.

The landlord's agent confirmed that the landlords were not with him and the landlords would not be at the hearing. As such, all of the landlord's evidence was provided in an evidence package, including a sworn affidavit, and information the landlord told to his agent.

The landlord's agent confirmed that the tenant had served the landlord with the tenant's hearing package; however, the landlord informed the agent that there was no evidence served to the landlord. I noted that the tenant had uploaded evidence to the Residential Tenancy Branch portal after filing; however, the tenant did not appear at the hearing to demonstrate how, or if, the tenant's evidence was served. The party that submits evidence has the burden to prove it was served to the other party. Also, Rule 7.4 of the Rules of Procedure provide:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Considering the tenant did not appear for the hearing and prove the tenant's evidence was served to the landlord, and did not appear at the hearing, to present it, I did not admit or further consider the tenant's evidence.

Nevertheless, having been satisfied the landlord was in receipt of the tenant's Application for Dispute Resolution, I proceeded to hear this matter with a view that the 2 Month Notice is under dispute and the landlords bear the burden to prove the tenancy should end for the reason stated on the 2 Month Notice.

As for service of the landlord's proceeding package, the landlord's agent submitted a registered mail receipt dated March 22, 2022 and stated the Canada Post website shows the package was successfully delivered on March 25, 2022. Further, the landlord's evidence package was sent to each of the tenants named on the tenant's Application for Dispute Resolution via registered mail sent on June 3, 2022. These packages were returned to sender as they were "unclaimed". I have recorded the registered mail numbers on the cover page of this decision.

Section 90 of the Act deems a person served five days after mailing, even if the person refuses to accept or pick up their mail. Pursuant to section 90 of the Act, I deemed the tenant to be served with the landlord's evidence five days after mailing, or June 8, 2022, and I admitted the landlord's evidence.

Naming of tenant(s)

On the tenant's Application for Dispute Resolution, two co-tenants were named (with the initials AC and MC); however, on the landlord's Application for Dispute Resolution only one tenant was named (AC). The landlord's agent stated there was no written tenancy agreement. When I turned to the 2 Month Notice, only one tenant is named (AC). I am uncertain as to the standing of MC as a tenant. As such, I excluded MC as a named tenant and the only person recognized as a tenant in this decision is AC.

Naming of landlord(s)

The tenant identified two landlords on the Tenant's Application for Dispute Resolution. Two landlords were also identified on the Landlord's Application for Dispute Resolution; however, the spelling is slightly different for one of the landlord's first name. The landlords had provided a copy of the title search for the subject property and I amend the tenant's Application for Dispute Resolution to correct the spelling of the landlord's

name to that on the Landlord's Application for Dispute Resolution and as seen on the title search.

Issue(s) to be Decided

1. Should the 2 Month Notice be upheld or cancelled?
2. Are the landlords entitled to an Order of Possession?
3. Award of filing fee(s).

Background and Evidence

I heard from the landlord's agent that there is no written tenancy agreement. The landlord's agent understands that the tenancy started approximately 5 years ago and the landlord collected a security deposit of \$500.00. The tenant is currently paying rent of \$1300.00 per month. Rent is payable on the first day of every month.

The landlord retained the services of the landlord's agent shortly before the 2 Month Notice was issued. The 2 Month Notice was issued by the landlord's agent and sent to the tenant via registered mail on February 18, 2022. A search of the Canada Post tracking number shows that the 2 Month Notice was successfully delivered on March 9, 2022. The tenant filed to dispute the 2 Month Notice on March 9, 2022.

The 2 Month Notice has a stated effective date of April 30, 2022. The reason for ending the tenancy, as stated on the 2 Month Notice, is:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input checked="" type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse

The landlord's agent stated the two registered owners of the property (referred to by initials SSK and PS) are brothers and currently live together in the upper/main unit of the house, along with their wives, children, mother and grandmother, for a total of 9 people sharing the upper unit for the past 10 months to one year. There is not enough space and privacy for the two families in the upper four bedroom unit so PS intends to move into the rental unit along with his wife, son, and grandmother.

The above statements were supported by the affidavit. A copy of the property's title was also submitted into evidence and shows the property is co-owned by SSK and PS, as joint tenants, and the subject property is their registered address.

The landlord's agent pointed to the reason the tenant disputed the 2 Month Notice is because the tenant does not want to move, as stated on the Tenant's Application for Dispute Resolution: "Disputing 2 month notice due to elderly parents and grandmother that is receiving home care she is 99 years old bed bound can't walk at all"; however, the owners require more living space and intend to use the rental unit for their personal living accommodation for the long term, of at least 12 months.

The landlord's agent also stated that his client is aware of the compensation requirement for ending a tenancy for landlord's use, including the consequences for not using the unit for the stated purpose, as indicated in the sworn affidavit.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

Upon review of the 2 Month Notice, I am satisfied that it is in the approved form and duly completed. I am further satisfied it was served upon the tenant as I was provided a registered mail receipt as proof of service and the tenant filed to dispute the 2 Month Notice.

Section 49(3) provides that a landlord may end a tenancy where:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49 also defines "landlord", for purposes of section 49, to be a person who holds no less than a 50% reversionary interest in the property.

As issue is whether the landlord has a good faith intention to end the tenancy so that the landlord or landlord's spouse or close family member may occupy the rental unit.

I have been provided a copy of the title for the subject property and it shows that SSK and PS are the two registered owners of the property and own the property as “joint tenants”. As such, I satisfied that SSK and PS each hold a 50% interest in the property and PS is, by definition, a landlord.

Landlord PS has signed a sworn affidavit that he, along with his wife, son and grandmother, intend to occupy the rental unit as they desire more space and privacy than the upper unit where they currently live with SSK and his family. The sworn affidavit provides that currently there are 9 people sharing the upper four bedroom unit.

I accept that it is reasonable that 9 people sharing a four bedroom unit would desire more space and privacy that this can be accomplished by taking over the three bedroom rental unit for their own use.

The tenant did not appear to dispute or refute any of the above.

In light of the above, I uphold the 2 Month Notice and I dismiss the tenant’s application.

Considering the effective date for the 2 Month Notice has passed, I grant the landlords an Order of Possession effective two days after service upon the tenant.

Since the tenancy has ended pursuant to a 2 Month Notice, the tenant remains entitled to the compensation provided under section 51 of the Act.

I make no award for recovery of filing fees to either party. Although the landlords were successful, their Application for Dispute Resolution was unnecessary as an Order of Possession may be provided to a landlord under a Tenant’s Application for Dispute Resolution to dispute a notice to end tenancy.

Conclusion

The tenancy has ended pursuant to a 2 Month Notice. The landlord is provided an Order of Possession effective two (2) days after service.

I make no award for recovery of filing fees to either party.

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: June 30, 2022

Residential Tenancy Branch