



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

This hearing dealt with the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 1, 2022 (2 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

Tenant LH (tenant) and her son JW (son), the landlord, RT (landlord) and an advocate for the landlord, JD (advocate) attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing. The parties were also provided an overview of the hearing process. I have only considered the evidence that was served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

The advocate confirmed that the landlord did have the opportunity to review the tenants' documentary evidence prior to the hearing and the advocate confirmed the landlord did not submit documentary evidence in response to this application.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

Issue to be Decided

- Should the 2 Month Notice be cancelled?

- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the most recent tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2018 and converted to a month-to-month tenancy after August 31, 2019. Monthly rent is \$3,300.00 per month and is due on the first day of each month. The parties confirmed that the landlord purchased the property as of September 1, 2021. As a result, the tenancy survived the sale of the property.

A copy of the 2 Month Notice was submitted in evidence. The 2 Month Notice is dated March 1, 2022; and the follows was indicated:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ 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.

☐ The landlord or the landlord's spouse

☒ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☒ The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

☐ All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

☐ The tenant no longer qualifies for the subsidized rental unit.

Furthermore, in their application, the tenants write in part as follows:

Only served page 1 and 2 of Two Mth Notice, **did not serve pgs 3 and 4**. Notice incomplete

[emphasis added]

The advocate stated that the landlord plans to have their daughter occupy the home and that they also run a family business, which they intend to operate from the home. The advocate wanted to call the daughter as a witness, which I indicated was not necessary as the landlord failed to provide a copy of pages 3 and 4, which they claimed were served on the tenant. The tenant vehemently denies that pages 3 and 4 of the 4-page 2 Month Notice were served by the landlord.

The tenant raised the issue of bad faith in their application.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice issued by landlord – Section 52 of the Act applies in this case and states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, **state the grounds for ending the tenancy**,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) **when given by a landlord, be in the approved form.**
[emphasis added]

In the matter before me, I find the owner filled out two reasons on the 2 Month Notice and that those reasons are exclusive of one another. Therefore, I find that by filling out two reasons, instead of one, and providing no documentary evidence that pages 3 and 4 were served, that the 2 Month Notice is not effective as it is not on the approved form when pages 3 and 4 contain critical information.

Given the above, I **cancel** the 2 Month Notice as a result. I find the 2 Month Notice is of **no force or effect**. The landlord is at liberty to issue a new 2 Month Notice with one correct reason selected and if disputed, be prepared to provide evidence that the entire notice was served and evidence of the reason selected.

I ORDER the tenancy to continue until ended in accordance with the Act.

I find I do not need to address the tenant's good faith argument as it is moot given that the 2 Month Notice has been cancelled due to multiple reasons being selected by the

landlord and failing to provide documentary evidence to support that pages 3 and 4 were served on the tenant.

As the tenant's application was successful, I grant the tenant the recovery of the \$100.00 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

Conclusion

The 2 Month Notice dated March 1, 2022 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The tenant has been authorized a one-time rent reduction in the amount of \$100.00 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 24, 2022

Residential Tenancy Branch