



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49.

I left the teleconference connection open until 11:11 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M. The landlord did not attend the hearing. Tenant RC (the tenant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Advocate for the tenant NA also attended. 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, his advocate and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on March 17, 2022, in accordance with section 89(1)(c) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on March 22, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issue to be Decided

Is the tenant entitled to cancellation of the Notice?

Background and Evidence

While I have turned my mind to the evidence of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

The tenant affirmed the tenancy started on February 01, 2012. Monthly rent is \$1,043.45, due on the first day of the month. At the outset of the tenancy a security deposit of \$450.50 was collected and the landlord holds it in trust.

The tenant stated he received the Notice on February 28, 2022. The tenant submitted this application on March 11, 2022 and continues to occupy the rental unit.

The tenant submitted a copy of the Notice into evidence. It is dated March 28, 2022 and the effective date is May 30, 2022. The Notice does not indicate the reason to end the tenancy.

The tenant does not believe the landlord will occupy the rental unit. The tenant believes the landlord wants to terminate the tenancy because of the tenant's advanced age.

Analysis

Section 49(8)(2) allows the tenant to dispute the 2 month Notice within 15 days after the date the tenant received it. As the tenant confirmed receipt of the Notice on February 28, 2022 and submitted this application on March 11, 2022, I find the tenant disputed the Notice within the timeframe of section 49(8)(2) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid. Furthermore, Policy Guideline 2A states that when issuing a notice under section 49 of the Act the landlord must demonstrate there is not an ulterior motive for ending the tenancy:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

The landlord did not attend the hearing and did not provide any evidence. Pursuant to Rule of Procedure 6.6, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy.

The Notice is therefore cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the Act.

Section 52 of the Act states:

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.

Furthermore, the Notice does not comply with section 52(d) of the Act, as it does not state the grounds for ending the tenancy.

Conclusion

The February 28, 2022 2 month Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

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 27, 2022