



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, MNRT, RR, RP, LRE, LAT, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on February 24, 2022 seeking:

- a. to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice")
- b. compensation for monetary loss
- c. compensation for the cost of emergency repairs the Tenant made
- d. reduction in rent for repairs agreed upon but not provided
- e. repairs made to the rental unit, after making a written request to the Landlord
- f. suspension/set conditions on the Landlord's right to enter
- g. authorization to change the locks on the rental unit
- h. the Landlord's compliance with the legislation and/or the tenancy agreement
- i. reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 3, 2022. The Tenant attended the hearing, and I provided them the opportunity to present oral testimony and make submissions during the hearing. The Landlord did not attend the telephone conference call hearing.

Preliminary Matter – notification of this hearing

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution for this hearing. The Residential Tenancy Branch provided that document to the Tenant on March 3, 2022. The Tenant must provide proof that they served the document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing the Tenant set out that they served this notice to the Landlord via registered mail. They did not provide proof of this, such as a registered mail tracking number or other information. They stated the Landlord was aware of the hearing because they provided evidence back to the Tenant in the form of police records.

I find the Tenant notified the Landlord of the hearing as required. The Landlord provided evidence to the Residential Tenancy Branch in preparation for this hearing, even though they did not attend. Further, the record shows that the Landlord contacted the branch in advance to inquire on the hearing process more generally – that communication was linked to the Tenant's Application.

Given this information, I find it more likely than not that the Tenant sent notice of the hearing to the Landlord. The hearing thus proceeded in the Landlord's absence.

Preliminary Matter – Tenant's disclosure

When I reviewed the Tenant's Application procedure in the hearing, the Tenant stated they did not provide their video evidence to the Landlord, even though they provided this to the Residential Tenancy Branch for this hearing. The Tenant also relies on documents relating to their claim for compensation which they stated they did not provide as evidence to the Landlord for this hearing, because they gave receipts to the Landlord in the past.

On my tentative review of this material, I find it is essential for the Tenant to provide all of this material to the Landlord. This is in line with the principles of administrative fairness. In the *Residential Tenancy Branch Rules of Procedure* Rule 3.1 provides that the applicant must service each respondent with *any other evidence submitted to the Residential Tenancy Branch*. It is fundamentally unfair for the Branch to receive materials to which the respondent has no awareness or access to refer to. Aside from this, a party cannot with surety state that they retained all materials in the past that may be relevant to a hearing process that arises some time later.

Because the Tenant could not with accuracy state which documents they *did* provide to the Landlord, I dismiss the grounds above not related to the Two-Month Notice. That is items b. through h. above. The Tenant has leave to reapply on these matters, which means that they must make a separate Application.

Issue(s) to be Decided

- Is the tenant entitled to an order that the landlord cancel the Two Month Notice?
- If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?
- Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant spoke to the terms of the tenancy agreement in the hearing. They provided that they signed a new tenancy agreement with this Landlord when the Landlord first came around after their purchase of the rental property. The Tenant stated they were living there since April or May 2020. They pay a rent of \$1,625 per month. The Tenant provided that the Landlord tried to end the tenancy previously but was unsuccessful at the review stage.

The Landlord issued the Two-Month Notice to the Tenant on February 23, 2022. The Landlord purportedly served the document to the Tenant for their own family member to occupy the rental unit. The Tenant stated their knowledge of the Landlord's family living in a different city. Also, the Tenant questioned the real truth of the Landlord's provided reason on the document: if this was true that the Landlord's family member wanted to occupy the rental unit, then would that be the basis of the first notice the Landlord issued to the Tenant, instead of for a different reason as occurred in February?

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

When a landlord issues a Two Month Notice and the tenant files an application to dispute the matter, that landlord bears the burden of proving they have grounds to end

the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

In this case, the Two Month Notice was issued pursuant to s. 49(3), and I accept the Tenant's statement that they received this document on February 23, 2022, posted to their door.

As the tenant's Application was filed on February 24, 2022, I find that they have disputed the Notice within the timeframe required under the *Act*.

In the absence of the Landlord, or any evidence from the Landlord to support the reason listed in the Two Month Notice, I find that it must be cancelled.

For these reasons, I cancel the Two Month Notice issued on February 23, 2022. The tenancy continues until it may otherwise legally end under the *Act*.

The Tenant was moderately successful in this Application. I find the Tenant is entitled to recover \$50 of the Application filing fee amount they paid for this Application. I authorize the Tenant to withhold the amount of \$50 from one future rent payment.

Conclusion

For the reasons above, I order the Two-Month Notice issued on February 23, 2022, is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Residential Tenancy Branch