



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on May 3, 2022 seeking an order to cancel the Two-Month Notice to End Tenancy For Landlord’s Use of Property. They also applied for a restriction on the Landlord’s right to enter the rental unit, the Landlord’s compliance with the legislation and/or tenancy agreement, and 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 August 30, 2022. In the conference call hearing, I explained the process and offered the attending party the opportunity to ask questions.

Preliminary Issue – service of the Notice of Dispute Resolution

At the outset of the hearing, the Tenant presented that they mailed the Notice of Dispute Resolution Proceeding to the Landlord via registered mail, to the address provided on the Two-Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”). This was on May 13, as shown in the registered mail tracking label the Tenant provided in their evidence. After this, the Tenant prepared two more packages of evidence to the same address.

The Landlord stated they did not receive the Tenant’s evidence for this hearing. However, this was in the middle of moving from that address, and “any paperwork I got I threw in a box.” They accepted fault if they did not have the evidence at hand during the hearing.

For the purpose of this hearing, I find the Tenant served the Landlord notice of the hearing and their evidence as required. This was in a method as set out in s. 89 of the *Act*. As per the *Residential Tenancy Branch Rules of Procedure*, I find the Tenant served required documentation to the Landlord in a timely manner.

Reciprocally, the Landlord provided evidence to the Tenant which the Tenant confirmed they received on August 23, 2022. From the Tenant's statement, I find the Landlord completed service as required before the hearing, within the timeline established in Rule 3.15 of the *Rules of Procedure*.

Preliminary Matter – relevant issues

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the Two-Month Notice issued by the Landlord.

I dismiss the Tenant's requests for the Landlord's compliance with the legislation and/or tenancy agreement, and restrictions on the Landlord's right to enter, with leave to re-apply.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is not successful in this Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, as per s. 72 of the *Act*?

Background and Evidence

The Tenant and Landlord each provided a copy of the Two-Month Notice signed by the Landlord on April 27, 2022. This set the end-of-tenancy date as July 1, 2022. The reason indicated on the second page by the Landlord was for their own use of the rental unit. The Landlord indicated they served this document to the Tenant in person on April 30, 2022; however, in the hearing the Tenant provided that this document was on the ground outside the entry to their rental unit; therefore, this was not “in person” as the Landlord indicated on the document.

In the hearing, the Landlord reviewed the circumstances that led them to issue this Two-Month Notice to the Tenant. This was the sale of another property they owned, and they “chose [the rental unit] as [favourite] spot.” They reviewed their current living arrangements in the hearing.

Analysis

The Landlord bears the onus to prove they have sufficient reason for ending the tenancy. Additionally, the Landlord must meet the standards regarding a notice to end the tenancy that are set out in the *Act*.

The *Act* s. 55 states, in part:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord’s notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:
- (a) the landlord’s notice to end tenancy complies with section 52 [form and content of notice to end tenancy, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant’s application or upholds the landlord’s notice.

The *Act* s. 52 states:

- 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) . . . state the grounds for ending the tenancy,
 - . . . and
 - (e) when given by a landlord, be in the approved form.

In this hearing, both parties submitted a copy of the Two-Month Notice. The copy has the incorrect name for each of two Tenants, and the incorrect address of the rental unit. Additionally, the Landlord did not provide their name as required on that form. I find the combination of these omissions and errors – especially the incorrect rental unit address and incorrect Tenant name – render the Two-Month Notice ineffective. I so order the Two-Month Notice cancelled, and the tenancy shall continue.

Conclusion

For the reasons above, I order the Two-Month Notice 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*.

Dated: August 31, 2022

Residential Tenancy Branch