



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, OPL

Introduction

This hearing dealt with cross-applications filed by the parties. On May 9, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 16, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 49 of the *Act*.

Both Tenants attended the hearing, and C.S. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Tenant I.H. advised that the Notice of Hearing and evidence package was served to the Landlord by hand on May 18, 2022, and that additional evidence was served to the Landlord by hand on June 25, 2022. C.S. confirmed that the Landlord received the Notice of Hearing package and likely received the Tenants' evidence; however, it was not provided to her by the Landlord. Based on this undisputed testimony, and in

accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was duly served the Tenants' Notice of Hearing and evidence packages. As this evidence has been served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

C.S. advised that only one Notice of Hearing package was served to both Tenants, which did not comply with Rule 3.1. of the Rules of Procedure. As well, she stated that the Landlord's evidence was served to the Tenants by registered mail on August 8, 2022. Tenant C.B. confirmed that they received the Notice of Hearing package and stated that they were prepared to proceed despite only receiving one package. Moreover, he confirmed that they received the Landlord's evidence package. Based on this undisputed testimony, I am satisfied that the Tenants were duly served the Landlord's Notice of Hearing and evidence package. As this evidence has been served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on or around July 1, 2020, that rent was currently established at an amount of \$750.00 per month, and that it was due on the first day of each month. A security deposit of \$375.00 was also paid. A signed tenancy agreement was not submitted as documentary evidence for consideration as the Landlord did not complete this pursuant to the *Act*.

C.S. advised that the Notice was served to the Tenants by registered mail on April 22, 2022. As well, she acknowledged that she likely did not serve pages three or four of the Notice. The Tenants confirmed that they only received two pages of the four-page Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, given that the Landlord has not served the complete four pages of the Notice, I am satisfied that what was served does not meet all of the requirements of Section 52.

Essentially, by not serving the entirety of the Notice, it could give the appearance that the Landlord was attempting to mislead the Tenants by not including the relevant information pertaining to their right to dispute the Notice. As such, I find that what the Landlord served to the Tenants does not constitute a valid Notice. Therefore, I find that the Notice of April 22, 2022 is cancelled and of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent in satisfaction of this claim.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of April 22, 2022 to be cancelled and of no force or effect. This tenancy continues until ended 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: September 15, 2022

Residential Tenancy Branch