



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants May 12, 2022 (the “Application”). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 07, 2022 (the “Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is the same as the dispute of the Notice and therefore I have only considered the dispute of the Notice.

The only evidence submitted by the parties was the Notice and therefore I did not address service of evidence. I did address service of the hearing package and the Landlord confirmed receipt of this.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenant testified as follows. The Tenants had a written tenancy agreement with a previous owner of the rental unit. The tenancy started 18 years ago. The last written tenancy agreement completed started in February of 2021 and was for a fixed term ending in February of 2022. Rent is \$2,170.00 due on the first day of each month. The Tenants did not pay a security deposit.

The Landlord testified that they purchased the rental unit, which is a house, in March of 2022. The Landlord agreed with the Tenant about the rent amount, when rent is due and the absence of a security deposit.

The Notice was submitted. The Notice is addressed to Tenant W.A.L. The Notice refers to the rental unit; however, the street number includes one wrong digit. The Notice is signed and dated by the Landlord. The Notice has an effective date of June 01, 2022. The grounds for the Notice are that the rental unit will be occupied by the Landlord or Landlord's spouse.

The Landlord testified that the Notice was served on the Tenants in person April 30, 2022. The Tenant agreed the Notice was served in person but did not know if it was served April 29 or 30, 2022.

The Tenant raised issues with the Notice including that the rental unit address, effective date and Landlord's address are wrong. The Landlord acknowledged these mistakes.

The Landlord testified that they purchased the rental unit to live in it with their wife, two children and parents. The Landlord testified that they intend to move into the rental unit when the Tenants vacate and that this is the reason the Notice was issued. The Landlord testified that they are currently renting another residence while waiting for possession of the rental unit.

The Landlord sought an Order of Possession effective at the end of September.

The Tenant did not dispute that the Landlord intends to move into the rental unit and agreed the Landlord does intend to move into the rental unit. The issues raised by the Tenant related to the form and content of the Notice and the Tenants requiring more time to have the rental unit vacated.

As stated, the only documentary evidence before me is the Notice.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The good faith requirement is explained in RTB Policy Guideline 2A at pages one to two.

The Tenants had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I accept the Notice was served April 30, 2022, because this is the date both parties agreed on. The Tenants disputed the Notice May 12, 2022, within time.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The Landlord also has the onus to prove the good faith requirement. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I accept that the Landlord intends in good faith to move into the rental unit with their family because the Landlord testified that this is the case, and the Tenant agreed the Landlord intends to move into the rental unit. I find the Tenant did not dispute that the Landlord had grounds to issue the Notice and issued the Notice in good faith. Given this, I find the Landlord has proven the grounds for the Notice as well as the good faith requirement.

The Tenant did raise issues with the form and content of the Notice. Pursuant to section 49(7) of the *Act*, the Notice must comply with section 52 of the *Act* which 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) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy...
- (e) when given by a landlord, be in the approved form.

It is an issue that the rental unit address is wrong on the Notice. However, section 68(1) of the *Act* states:

68 (1) If a notice to end a tenancy does not comply with section 52...the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I find the Notice should be amended to include the correct rental unit address because the address is correct except for one digit of the five-digit street number. I find this was simply a mistake. Further, I find the Tenants should have known the Notice relates to the rental unit because the Notice is addressed to Tenant W.A.L. and the rental unit address is only one digit off. I do not find that there is prejudice to the Tenants in amending the Notice. I find with this amendment, the Notice complies with section 52 of the *Act*.

Section 52 of the *Act* does not require the Landlord's address be on the Notice and therefore I do not find the incorrect address for the Landlord invalidates the Notice.

In relation to the effective date of the Notice, section 49(2)(a) of the *Act* states:

(2) Subject to section 51...a landlord may end a tenancy

(a) for a purpose referred to in subsection (3)...by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy...

I have accepted that the Tenants received the Notice April 30, 2022. Therefore, the effective date of the Notice was June 30, 2022. Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Pursuant to section 53 of the *Act*, the effective date of the Notice automatically changes to June 30, 2022. The incorrect effective date does not invalidate the Notice.

Given the above, I find the Notice is valid and I uphold the Notice. Given this, I dismiss the dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* states:

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.

I have found the Notice complies with section 52 of the *Act* and have dismissed the Tenants' dispute of the Notice. The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on September 30, 2022.

I note that it was clear during the hearing that the Tenants required more time to have the rental unit vacated. However, the Landlord has proven the Notice is valid and was entitled to an Order of Possession effective two days after service on the Tenants. Here, the Landlord has not asked for a two-day Order of Possession and instead has asked for an Order of Possession effective at the end of September, which the Landlord is entitled to. I note that the *Act* deems two months notice appropriate when a landlord wants to move into a rental unit and here, the Tenants will now have had five months notice.

Given the Tenants have not been successful in the Application, I decline to award them recovery of the filing fee.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on September 30, 2022. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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

Dated: September 21, 2022

Residential Tenancy Branch