



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, CNR, OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on June 5, 2022 for:

- an order to cancel a Two Month Notice for Landlord's Use of Property, dated May 31, 2022 (the Two Month Notice); and
- the filing fee.

The tenant amended her application on August 5, 2022, seeking:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice); and
- an order for the landlord to comply with the Act, regulation, and/or tenancy agreement.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding (NDRP), evidence, and amendment form.

The landlord did not submit any responsive evidence.

The tenant testified she vacated the rental unit on or around August 15, 2022; the landlord testified she is seeking an order of possession as she does not have the keys to the unit.

Preliminary Matters

As the tenant testified she has vacated the rental unit, I dismiss her application to dispute the Two Month Notice.

As a copy of the 10 Day Notice was not in evidence, I will not consider it. Section 46 of the Act requires an arbitrator to assess the validity of a notice to end tenancy, requiring the arbitrator to view a copy of the notice.

Considering the tenant's application for the landlord to comply with the Act, regulation, and/or tenancy agreement, I found the issues identified by the tenant regarding this claim were the same as those considered in their dispute of the 10 Day Notice: alleged unpaid rent and utilities. Therefore, I declined to hear on it.

As the tenant's claims are dismissed, I decline to award the filing fee.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began April 1, 2008; rent was due on the first of the month; and the tenant paid a security deposit of \$450.00, which the landlord still holds.

The landlord testified they served the Two Month Notice in person on May 31, 2022. The tenant testified the landlord served the Notice by hand on June 1, 2022.

A copy of the Two Month Notice is submitted as evidence. It is signed and dated May 31, 2022 by the landlord, gives the address of the rental unit, states the effective date of July 31, 2022, states the reason for ending the tenancy, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the father or mother of the landlord or landlord's spouse will occupy the unit.

The landlord testified that she served the Two Month Notice on the tenant as the landlord wishes to move her elderly father into the rental unit.

The reason for the notice was not disputed by the tenant.

The landlord testified that she is seeking an order of possession because though the tenant stated she vacated the unit on August 15, 2022, the tenant texted the landlord on August 29, 2022, telling the landlord to “stay off my property” and that the tenant had until mid-October to vacate the unit. The landlord testified that the tenant’s air conditioner was still at the unit as of September 14, 2022.

Analysis

Based on the testimony of the parties, I find the landlord served the Two Month Notice on the tenant in person on May 31 or June 1, 2022. I find the landlord served the tenant the Two Month Notice in accordance with section 88 of the Act.

As the Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

Section 49 of the Act permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The landlord has provided affirmed undisputed testimony that she intends for her elderly father to occupy the unit.

Having considered the testimony of the parties, I find on a balance of probabilities that the landlord has met the onus of proving the reason for the Two Month Notice, that being that it will be occupied by the landlord’s father.

Therefore, in accordance with section 49 of the Act, I find the landlord is entitled to an order of possession.

Conclusion

The tenant’s application is dismissed; the Two Month Notice is upheld.

The landlord is granted an order of possession which will be effective immediately.

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: October 24, 2022

Residential Tenancy Branch