



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the hearing with the advocate ("the tenant") and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

Service

As the landlord did not attend the hearing, the tenant provided evidence of service.

The tenant provided testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on June 24, 2022 to the landlord's residence and deemed received by the landlord under section 90 of the *Act* five days later, June 24, 2022.

The tenant submitted a copy of the mailing receipt as evidence which included the Canada Post Tracking Number.

Pursuant to the tenant's evidence and sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on June 24, 2022.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Two Month Notice?

Background and Evidence

I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenant submitted a copy of the tenancy agreement summarized as follows:

INFORMATION	DETAILS
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Type of Tenancy	Fixed term, 1 year
Beginning Date	Aug 1, 2021
Fixed Term End Date	July 31, 2022, then month-to-month
Vacancy Date	Current Tenant
Rent payable on first of month	\$2,500.00
Security deposit	\$1,550.00 + key deposit of \$300.00

The tenant submitted a copy of a Two Month Notice in the RTB, the key elements summarized as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	May 28, 2022
Effective Date of Notice	July 31, 2022
Date and Method of Service	Acknowledged
Reasons for Issuance	Unit to be occupied by landlord or landlord's spouse
Application for Dispute Resolution filed - date	June 10, 2022, within 15-day time period

The tenant has not accepted the Two Month Notice and is seeking cancellation of the Notice.

The burden to support the reason to end the tenancy rests with the landlord.

The landlord failed to attend the hearing.

Analysis

Based on the above, the testimony and evidence of tenant, and on a balance of probabilities, I find as follows:

I find that the landlord was served with Notice of Hearing and Application for Dispute Resolution.

A landlord who issues a notice to end tenancy bears the burden of proof that there is sufficient reason to end a tenancy.

The landlord failed to attend the hearing to confirm that the landlord issued the Two Month Notice and to provide testimony on why the tenancy needs to end.

Since the landlord has failed to attend the hearing to provide testimony and pursue enforcement of the Two Month Notice, the Notice is cancelled.

The tenant's' application to cancel the Two Month Notice is successful. The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the landlord to repay the \$100.00 fee that the tenant paid to make application for dispute resolution. The tenant may deduct \$100.00 from the monthly rent on a one-time basis only.

Conclusion

The landlord failed to attend the hearing to provide testimony and pursue enforcement of the Two Month Notice. The Two Month Notice is cancelled.

The 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: October 24, 2022

Residential Tenancy Branch