



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, OLC, FFT

Introduction

On May 27, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the “Notice”) pursuant to Section 49.1 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with D.B. attending as a translator for the Landlord, and E.T. attending as an advocate 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.

The Tenant advised that the Landlord was served with the Notice of Hearing package by hand on June 10, 2022, and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Tenant’s Notice of Hearing package.

She then advised that she served her evidence to the Landlord by hand on September 19, 2022; however, she did not check to see if the Landlord could view her digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure (the “Rules”). As well, she did not serve the evidence that was submitted to the Residential Tenancy Branch on September 26, 2022. The Landlord confirmed that she received the September 19, 2022 evidence package by hand, but she was not able to view the digital evidence. As such, I have accepted the Tenant’s documentary evidence only, and will consider it

when rendering this Decision. The Tenant's digital evidence and evidence served on September 26, 2022, will be excluded and not considered when rendering this Decision.

E.T. advised that the Landlord's evidence was served the Tenant by hand on September 27, 2022. The Tenant confirmed that she received this evidence, and while it was served late, she stated that she had reviewed it and was prepared to respond to it. Despite this evidence being served late, and not in accordance with Rule 3.15 of the Rules, as the Tenant was prepared to respond to it, I have accepted this evidence and will consider it when rendering this Decision.

Rule 2.3 of the Rules indicates that claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the Tenant's other claim was dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties 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

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of 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.

While E.T. disputed some basic details of the tenancy, the signed tenancy agreement specifically indicated that the tenancy started on September 5, 2021, that rent was

currently established at \$1,500.00 per month, and that it was due on the fifth day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

E.T. advised that the Tenant was served the Notice by hand on May 23, 2022. The effective end date of the tenancy was noted on the Notice as July 30, 2022. The reason that was checked off on the Notice was because "The tenant no longer qualifies for the subsidized rental unit." As well, next to this reason, the Landlord handwrote "Buyer intends to renovate building."

It was brought to her attention that the Landlord noted that the dispute address on the first page of the Notice was the same as the Landlord's address. She submitted that neither the Landlord, nor her brother, knew how to complete this Notice, and this was the reason for the discrepancy of the dispute address. As well, she indicated that this was not a subsidized rental unit and that the Landlord mistakenly checked off the wrong box for wanting to end the tenancy.

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 49.1 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Tenant ceases to qualify for a rental subsidy.

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.

I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate the grounds for ending the tenancy. However, the consistent and undisputed evidence is that this tenancy was not a subsidized rental unit. Moreover, the Landlord cannot simply write in her own reason for wanting to end the tenancy, and this Notice cannot be used to end the tenancy for the purpose of renovations, in any event. Most importantly, I do not accept that the Landlord can indicate these reasons on the Notice and expect that the Tenant should understand that she was attempting to end the tenancy for one of the other valid reasons on the Notice.

Ultimately, I am not satisfied this was a valid Notice. Therefore, I find that the Notice of May 23, 2022 is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. As such, the Tenant is permitted to withhold this amount from the next month's rent to satisfy this debt.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit of May 23, 2022 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*. The Tenant is also permitted to withhold the \$100.00 filing fee from the next month's rent.

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 5, 2022

Residential Tenancy Branch