



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant July 04, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 02, 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 appeared at the hearing with their son, Y.L., to assist. The Landlord did not appear at the hearing. I explained the hearing process to the Tenant and Y.L. I told the Tenant and Y.L. they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant and Y.L. provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

Y.L. testified that the hearing package and Tenant’s evidence were sent to the Landlord at the address on the Notice by registered mail July 20, 2022. The Tenant submitted documentary evidence of service with Tracking Number 829 on it and Y.L. confirmed this relates to the hearing package and Tenant’s evidence. I looked Tracking Number 829 up on the Canada Post website which shows the package was unclaimed after notice cards were left July 21 and 26, 2022.

Based on the undisputed testimony of Y.L. and documentary evidence of service, I find the Landlord was served with the hearing package and Tenant's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act") on July 20, 2022. The Landlord cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the package July 25, 2022. I also find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord.

In relation to the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement, the Tenant stated on the Application:

As a long term tenant (since 2010), I've never broken any rules and regulations stated in the agreement. There's no reason for me to receive a notice to end tenancy.

I find the request for an order that the Landlord comply is the same as the dispute of the Notice and therefore dismiss the request without leave to re-apply. During the hearing, Y.L. said the Tenant is seeking compensation from the Landlord. I told Y.L. I cannot consider a request for compensation because the Tenant did not apply for it on the Application. I told Y.L. the Tenant will have to file an Application for Dispute Resolution seeking compensation if they believe compensation is owed.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant submitted a written tenancy agreement between them and a different landlord than that named on the Application. Y.L. advised that the Tenant had a tenancy agreement with the prior owner of the rental unit and the Landlord purchased the rental unit and became the landlord. The tenancy started June 01, 2010.

The Tenant submitted page one of the Notice. Y.L. testified that the Tenant only received page one of the four-page Notice. Y.L. testified that the Tenant received the Notice in person June 27, 2022.

The hearing proceeded for 23 minutes, and the Landlord did not call into the hearing during this time.

Analysis

The Notice was issued pursuant to section 49 of the *Act*. 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...

(d) ...state the grounds for ending the tenancy...

(e) when given by a landlord, be in the approved form.

I cancel the Notice for two reasons.

First, pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. Given the Landlord did not submit evidence for the hearing and did not appear at the hearing, the Landlord has failed to prove the grounds for the Notice and the Notice is cancelled.

Second, I accept the undisputed testimony of Y.L. that the Tenant only received page one of the four-page Notice and therefore I find the Notice does not comply with section 52(d) or (e) of the *Act* and therefore cancel the Notice.

The Tenant is entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenant can deduct \$100.00 from their next rent payment pursuant to section 72(2) of the *Act*.

The Application is granted. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*. The Tenant can deduct \$100.00 from their next rent payment

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*. The Tenant can deduct \$100.00 from their next rent payment

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: November 22, 2022

Residential Tenancy Branch