



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 dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), pursuant to section 49;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue – Service

Both parties agree that the tenant served the landlord with the tenant's application for dispute resolution and evidence via registered mail. I find that the above documents were served in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

Both parties agree that the landlord served the tenant with a letter seeking to end the tenancy on August 1, 2022 because her son planned to move into the subject rental property. Both parties agree that the notice to end tenancy was not on the approved Residential Tenancy Branch form and is invalid. The notice to end tenancy was entered into evidence and is dated May 24, 2022.

The tenant testified that he is seeking the landlord to provide him with the correct Residential Tenancy Branch notice to end tenancy, which comes with one free month's rent.

Analysis

Section 52 of the *Act* states that 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,
- (d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e)when given by a landlord, be in the approved form.

As acknowledged by both parties, the notice to end tenancy served on the tenant was not in the approved form (RTB Form 32). Pursuant to section 52(e), I find that the letter purporting to end the tenancy, dated May 24, 2022, is ineffective. I therefore grant the tenant's application to cancel the Notice.

Pursuant to section 62 of the *Act*, if the landlord intends to end the tenancy, and the parties do not enter into a Mutual Agreement to End Tenancy, I direct the landlord to ensure any notice to end tenancy served on the tenant meets the section 52 requirements of the *Act*.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The Notice is cancelled and of no force or effect.

If the landlord intends to end the tenancy, and the parties do not enter into a Mutual Agreement to End Tenancy, I direct the landlord to ensure any notice to end tenancy served on the tenant meets the section 52 requirements of the *Act*.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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: November 07, 2022

Residential Tenancy Branch