



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on June 30, 2022 seeking an order to cancel the Two-Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Two-Month Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 18, 2022.

Both parties attended the conference call hearing. The Landlord confirmed that they received the Notice of Dispute Resolution Proceeding (the “Notice”) from the Tenant directly in person to an adult who lived at the Landlord’s residence, as set out on the Two-Month Notice.

Preliminary Matter – Parties’ evidence service

The Tenant provided that they did not provide any other evidence to the Landlord. The only documents that the Tenant submitted to the Residential Tenancy Branch for this hearing were copies of the One-Month Notice, and another separate One-Month Notice, discussed below.

The Landlord submitted evidence to the Residential Tenancy Branch on the hearing date. I exclude this evidence from consideration, given the Landlord did not provide a copy to the Tenant and did not submit a copy at least seven days in advance of the hearing, thus violating Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*. Those *Rules* are founded in basic principles of administrative fairness. My consideration of the Landlord’s evidence that they did not disclose to the Tenant would be prejudicial to the Tenant here.

Preliminary Matter

The *Rules* permit an amendment to an Application at the hearing, as per Rule 4.2. Here, the Tenant applied on the Landlord's issuance of a Two-Month Notice dated June 29, 2022. After this, the Landlord issued another Two-Month Notice on July 18, 2022.

I amend the Tenant's Application to include the second Two-Month Notice issued on July 18, 2022. The reasons for this are addressed below.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Two-Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two-Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Background and Evidence

The Tenant stated they did not have a documented tenancy agreement with the Landlord here. They paid a rent amount of \$1,500 for the entire duration of this tenancy, which they stated began on April 1, 2018. They paid a security deposit of \$750 at the start of the tenancy. The Landlord confirmed the basic terms of the agreement in place between the parties, and provided that they had signed a "intent to rent" document at the start of the tenancy though this did not appear in their evidence.

The Landlord issued a Two-Month Notice to the Tenant on June 29, 2022. This provided the move-out end-of-tenancy date as August 31, 2022. The second page of that document shows the Landlord's indication that "the landlord or the landlord's spouse" and "the child of the landlord or the landlord's spouse" will occupy the rental unit.

This June 29 Two-Month Notice names a Tenant "F.I." In the hearing, the Tenant stated this is not their name. The Landlord acknowledged they provided this name on the document in error. They similarly gave the Tenant's incorrect name on the Proof of Service they completed for service on that date.

The Landlord issued a second following Two-Month Notice to the Tenant on July 18, 2022. This correctly names the Tenant in this rental unit and gives the final move-out date as September 20, 2022. The Tenant provided the first page of this document in their evidence. The Landlord stated they corrected the Tenant name on this second Two-Month Notice because the Tenant had applied for dispute resolution, and the error was apparent to the Landlord because of that Application.

In the hearing, the Landlord provided that their family member – the Landlord’s child – is intending to occupy that rental unit. Also, one of the parents (*i.e.*, the Landlord’s spouse) would occasionally occupy the rental unit. This child lives with the parents currently; however, that child did see that they needed their own space. The Landlord in the hearing described this as a “very urgent need” and “something to do with work, but don’t know the reason why exactly.” They described this child as stating their need to move into the rental unit, and this would entail, from that child’s perspective, renovations to the rental unit.

The Tenant provided that they earlier received a notice to end the tenancy from the Landlord in March 22. They recalled this document provided the reason that the rental unit would be renovated. They contacted the Residential Tenancy Branch about this particular document; the Tenant was informed by the Residential Tenancy Branch that the process requires the Landlord to apply for that end-of-tenancy process via the Residential Tenancy Branch.

The Tenant summarized this to say they were receiving different reasons from the Landlord – via notices to end tenancy or other statements involving utilities – that the tenancy has to end. They stated they had searched for suitable housing elsewhere because of these notices to end tenancy; however, the market situation is very difficult.

Analysis

The Act s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or close family member of the landlord intends in good faith to occupy the rental unit.” Following this, s. 55 provides that I must grant to the landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the Tenant’s Application or uphold the Landlord’s notice.

In this matter, the Landlord bears the onus to prove the reason for ending the tenancy is valid and undertaken in good faith. This means the Landlord must demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

I cancel the Two-Month Notice issued by the Landlord on June 29, 2022. The Tenant's name was not on this document. I find the Landlord acknowledged this error and effectively withdrew this Two-Month Notice by issuing a second Two-Month Notice on July 18.

After the Tenant's Application for this hearing, the Landlord issued the second Two-Month Notice. I amend the Tenant's Application to include consideration of this second Two-Month Notice. I find, in effect, it replaced the first Two-Month Notice and from the Landlord's perspective they issued that document for the same reason, albeit with a different timeline. This was a circumstance that could reasonably be anticipated given consideration of the Landlord's desire to end the tenancy in this hearing.

Looking at this second Two-Month Notice exclusively, I am not satisfied of the Landlord's need for the rental unit. This is focused on the needs of their child for a separate living unit; however, the Landlord did not clearly present this need in detail in the hearing. Ostensibly it has something to do with that family member's work, though the details about that reason were not presented in the hearing.

The Tenant raised two issues: they had a discussion with an acquaintance of the Landlord that utility amounts were high, and the tenancy must end for that reason; also, the Landlord issued an earlier end-of-tenancy document for reasons of renovations. I find this taints the Landlord's stated reason that their family member needs the rental unit. Minus strong reasons for the family member's need, I find it equally apparent that the Landlord had some concern related to the expense of this tenancy, and the age or condition of the rental unit. It is apparent that some other reasons are behind the Landlord seeking to end the tenancy in this manner.

There was no strong evidence, such as that from their child who desired the rental unit, on what the reason for seeking to end this tenancy is. I weigh this against the relatively long term that this tenancy has continued, with the Tenant receiving some other messages from the Landlord (as the Tenant affirmed under oath) that they sought to end the tenancy for some other reasons in the past.

For these reasons, I cancel the Two-Month Notice the Landlord issued on July 18, 2022, and the tenancy will continue.

Conclusion

For the reasons above, I order that the Two-Month Notice issued by the Landlord on June 29, 2022 is cancelled. The Two-Month Notice issued by the Landlord on July 18, 2022 is similarly cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 18, 2022

Residential Tenancy Branch