



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, DRI, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for more time to apply to cancel an eviction notice; for an Order cancelling a verbal Two Month Notice to End the Tenancy for Landlord's Use, given on October 2, 2022 ("Two Month Notice"); to dispute a rent increase from the Landlord; for an Order for the Landlord to Comply with the Act or tenancy agreement; and to recover his \$100.00 Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any documentary evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a Two Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this one-hour proceeding. I will, therefore, only consider the Tenant's request for more time to apply, his request to set aside the Two Month Notice, and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply.

The Tenant applied for more time to apply to cancel the eviction notice; however, as the Tenant said he was only told to move out verbally, and he never received a documentary notice to end the tenancy from the Landlord. As such, I find that the Tenant did not breach the Act or Rules in applying for dispute resolution. Accordingly, I find that this is not an issue before me.

In the hearing, the Landlord said that he served the Tenant with his notice to end tenancy by putting it in the Tenants' mailbox, as they asked him not to post it on their door. However, the Tenant denied having received any documentary notice to end the tenancy, and the Landlord did not submit a copy of it to the RTB.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession if, first, I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Given that there is no evidence before me that a valid Two Month Notice was served to the Tenant, I grant the Tenant what he seeks in cancelling any verbal or other notice to end the tenancy that led to this hearing, pursuant to section 62 of the Act.

The tenancy continues until ended in accordance with the Act.

Further, given his success in this Application, I **award the Tenant** with recovery of his

\$100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act. I **authorize the Tenant to deduct \$100.00 from one upcoming rent payment** in complete satisfaction of this award, pursuant to section 72 of the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 17, 2022

Residential Tenancy Branch