



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL**

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks an order for cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 1, 2022 ("2 Month Notice") pursuant to section 49 of the Act.

The two Landlords ("LH" and "FH"), the Landlords' advocate ("DA") and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and some of his evidence ("NDRP Package") on FH in person on August 5, 2022 but did not serve it on LH. DA acknowledged FH received the NDRP Package. I find the NDRP Package was served on FH in accordance with the provisions of sections 88 and 89 of the Act. DA acknowledged LH reviewed the NDRP Package. As such, I find LH was sufficiently served with the NDRP Package pursuant in accordance with the provisions of section 71(2)(b) of the Act.

The Tenant stated he served further evidence in the Landlord's mailbox on November 19, 2022. DA acknowledged the Landlords received the Tenant's additional evidence and they have reviewed it. I find the Landlords were sufficiently served with the Tenant's additional evidence in accordance with the provisions of section 71(2)(b) of the Act.

DA stated the Landlords served the Tenant with their evidence by posting it on the Tenant's door on November 29, 2022. The Tenant acknowledged receiving the Landlords' evidence. I find the Landlords' evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notice?
- If the 2 Month Notice is not cancelled, are the Landlords entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a copy of the tenancy agreement between the Landlords and Tenant. The parties agreed the tenancy commenced on March 1, 2014, on a month-to-month basis, with rent of \$650.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$325.00. DA acknowledged the Landlords received the security deposit from the Tenant and that they were holding it in trust for the Tenant. The Tenant stated the last payment he made for rent was for July 2022 and, after that time, the Landlords have refused to accept his e-transfer payments of the rent.

DA stated the Landlords served the 2 Month Notice on the Tenant's door on July 1, 2022. The 2 Month Notice stated the reason for ending the tenancy was the rental unit would be occupied by the landlord or the landlord's spouse. DA stated the Landlords issued the 2 Month Notice because they want to use the rental unit for themselves.

LH stated the Landlord JH told him on May 30, 2022 that the Landlords wanted the rental unit because their daughter was going to move into it. The Tenant submitted into evidence an audio recording of the conversation between and LH made on May 30, 2022 to corroborate his testimony. The Tenant stated that, at the beginning of April 2022, the Landlord sought a rent increase of \$200.00. However, the Landlords agreed to an increase of only \$100.00. The Tenant submitted into evidence a copy of an e-transfer for \$750.00 on April 29, 2022, rather than the \$650.00 required by the tenancy agreement, to corroborate his testimony.

LH stated that, prior to serving the Tenant with the 2 Month Notice, the Landlords intended that their daughter would occupy the rental unit and that she would be working from the rental unit. LH stated the daughter's employer, located in San Francisco, would not permit their daughter to work from home anymore. LH stated that the Landlords then decided to end the tenancy pursuant to the 2 Month Notice so that they would have the use of the rental unit for themselves. LH stated FH was going to relocate his piano, guitar and speakers to the rental unit and play his music there.

The Tenant stated he only received the first 2 pages of the 1 Month Notice. DA acknowledged the Landlords did not serve the last 2 pages of the 1 Month Notice on the Tenant through inadvertence.

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Analysis

Subsections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1) In this section:

[...]

"landlord" means

(a) for the purposes of subsection (3), an individual who

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest;

[...]

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) *if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy,*
or

[...]

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord *intends in good faith to occupy the rental unit*.
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
 - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

[emphasis in italics added]

DA stated the Landlords served the 2 Month Notice on the Tenant's door on July 1, 2022. Pursuant to section 90, the Tenant was deemed to have received the 2 Month Notice on July 4, 2022. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or July 19, 2022. The records of the Residential Tenancy Branch disclose the Application was filed on July 16, 2022. As such, I find the Tenant made the Application, to dispute the 2 Month Notice, within the 15-day dispute period required by section 49(8)(a) of the Act.

Section 49 (7) of the Act requires the 2 Month Notice to comply with the form and content requirements of section 52 of the Act. Section 52 of the Act states:

52 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.*

[emphasis in italics added]

The Tenant stated he only received the first 2 pages of the 1 Month Notice. DA acknowledged the Landlords did not serve the last 2 pages of the 1 Month Notice on the Tenant. A Two Month Notice to End Tenancy for Use of Landlord's Use of Property pursuant to section 49(2) is required to be given to the tenant on Form RTB-32. Form RTB-32 consists of four pages. As such, the 2 Month Notice served by the Landlords on the Tenant did not comply with the form requirements of section 52(d) of the Act. Based on the foregoing, the 2 Month Notice was not effective when it was served on the Tenant by the Landlords. As such, I order the 2 Month Notice to be cancelled and of no force or effect. The tenancy continues until ended in accordance with the provisions of the Act.

As I have cancelled the 2 Month Notice on the basis it did not comply with the form and content requirements of section 52 of the Act, it is unnecessary for me to make a determination of whether the Landlords were acting in good faith as required by the provisions of section 49(3) of the Act.

Conclusion

The 2 Month Notice is cancelled. The tenancy continues until it is ended in accordance with the provisions of the Act.

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: December 13, 2022

Residential Tenancy Branch