



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.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. Tenant J.Y. attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that tenant J.Y. and I were the only ones who had called into this teleconference.

Tenant J.Y. was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Tenant J.Y. 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."

The tenant confirmed their email address for service of this Decision.

Preliminary Issue- Service

Tenant J.Y. testified that she served the landlord with this application for dispute resolution via registered mail on August 18, 2022. Tenant J.Y. provided me with the tracking number for the above mailing in the hearing. The tracking number is located on the cover page of this decision. Based on tenant J.Y.'s testimony and the tracking number provided in the hearing, I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

Tenant J.Y. testified that she personally served the landlord with her evidence on November 7, 2022. I accept tenant J.Y.'s undisputed testimony that the landlord was personally served with the tenant's evidence on November 7, 2022, in accordance with section 88 of the *Act*.

Issue to be Decided

1. Are the tenants 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. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenants, not all details of the tenant J.Y.'s submissions and arguments are reproduced here. The relevant and important aspects of tenant J.Y.'s claims and my findings are set out below.

Tenant J.Y. testified that this tenancy began on March 14, 2013 and is currently ongoing. Monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenants to the landlord. A written

tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that the landlord served her with the following Notice:

The intention of this letter is to inform you that I need to give you a notice of lease termination for our lease contract signed at March 14, 2013 for the property located at:

[REDACTED]

The term of this notice is two months.

The intended end of tenancy is the end of month September 2022.

You are kindly expected to take care of your utilities and lease until that date.

The reason for this notice is that my daughter will be moving into this property and will be living there.

The address of the subject rental property was redacted for privacy. Tenant J.Y. testified that the landlord did not serve her with a notice to end tenancy on a Residential Tenancy Branch form.

Tenant J.Y. testified that on November 7, 2022 the landlord told her that he rescinded the Notice because his daughter did not want to move into the subject rental property and he served her with the above notice before asking his daughter to move in.

Tenant J.Y. testified that the landlord was not acting in good faith when he served the notice to end tenancy because his daughter never intended to move in. The tenant testified that she is seeking an Order that the landlord comply with *Act* when serving notices to end tenancy.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I find that the landlord, who did not attend this hearing after being dully served with the tenant's application for dispute resolution, has not met the required burden of proof and thus has not proved the reason they wish to end the tenancy. The Notice is therefore cancelled and of no force or effect.

Additionally, section 52(e) of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must when given by a landlord, be in the approved form. I find that the Notice is not on RTB Form 32 and so is not in the approved form and is ineffective and is cancelled and of no force or effect.

I accept tenant J.Y.'s undisputed testimony that the landlord was acting in bad faith in serving the Notice because the landlord's daughter did not intend on moving into the subject rental property. I order the landlord to comply with the *Act* and all good faith requirements contained in the *Act*, when serving any future notice to end tenancy.

As the tenants were successful in this application for dispute resolution, I find that the tenants are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

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.

The landlord is ordered to comply with the *Act* and all good faith requirements contained in the *Act*, when serving any future notice to end tenancy.

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: December 16, 2022

Residential Tenancy Branch