



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL (x2), RP, DRI, PSF, LRE, OLC, FFT

Introduction

Tenant MJD ("Tenant A") filed an Application for Dispute Resolution on September 14, 2022 seeking:

- a. an order to cancel the Landlord's Two-Month Notice to End the Tenancy for Landlord's Use of Property (the "Two-Month Notice A")
- b. repairs in the rental unit
- c. the Landlord's provision of services/facilities required by the tenancy agreement/law
- d. suspension/set conditions on the Landlord's right to enter the rental unit
- e. reimbursement of the Application filing fee.

On that same day, Tenant JJD ("Tenant B"), who resides in the same rental unit, filed their Application seeking:

- f. an order to cancel the separate Two-Month Notice ("Two-Month Notice B")
- g. to dispute a rent increase that was above the amount allowed by law
- h. repairs in the rental unit
- i. the Landlord's provision of services/facilities required by the tenancy agreement/law
- j. suspension/set conditions on the Landlord's right to enter the rental unit
- k. the Landlord's compliance with the legislation and/or the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on January 31, 2022. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The Tenant B and the Landlord attended the hearing. I provided each party the opportunity to present oral testimony and make submissions.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding, from each Applicant. The Landlord also confirmed they received the Tenant's documentary evidence sent in two mailings, in October 2022 and January 2023.

The Landlord confirmed they provided no documentary evidence for this hearing. I advised the parties that testimony in the hearing is a form of evidence that was being recorded.

Preliminary Matter – amendment of Applications

At the outset of the hearing, the Tenant advised they withdrew all of the other components of their claim that do not concern either Two-Month Notice A or Two-Month Notice B. I permit these issues – b. through e., and g. through k. – to be withdrawn through amendment at the Tenant's request.

Issues to be Decided

Are Tenant A and/or Tenant B entitled to a cancellation of the Two-Month Notices?

If unsuccessful in either Application, is the Landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

Tenant B presented no documented tenancy agreement for this hearing. They spoke to the terms of the agreement in place since they moved into the rental unit for the tenancy that started on July 1, 2019. Tenant A moved in on March 15, 2022. Tenant B paid the amount of \$733 in rent; Tenant A separately paid the Landlord \$800 each month for rent.

Tenant A advised there was a third tenant present in the rental unit until they moved out at the end of October 2022. This third tenant also received an end-of-tenancy notice from the Landlord.

In the hearing, the Landlord confirmed these basic details of the tenancy agreement were correct from their perspective.

The Landlord issued Two-Month Notice A and Two-Month Notice B on August 31, 2022. Tenant B confirmed they received these notices that the Landlord served to them in person on that date. Each notice lists the following reasons on page 2 of the form:

- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.
- The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

In the hearing, the Landlord described the situation with their family members who require this rental unit. Two children reside in the same city as that of the rental unit and they are currently paying rent in each of their own living situations. Their third child requires a daily commute from their current living arrangement, some distance to where they work in the same city as that of the rental unit.

The Landlord described a repair because of the state of the rental unit. They stated the local municipality would not issue any permits for such work without specifics, or an inspection which Tenant B would not accommodate. The Landlord's child would make repairs and/or renovations in the rental unit that would commence when they live begin to live there.

The Landlord described having a conversation with the prior third tenant, and their local property manager first mentioned the possibility of the tenancy ending in summer 2022. With the onset of colder weather in the winter months, this was when the Landlord decided that their own family members need to occupy the rental unit.

Tenant B mentioned Tenant A's immediate health situation. The Landlord cited this situation as "scary" and that they didn't want anything like that happening in the rental unit property.

Tenant B in the hearing reviewed receiving the end-of-tenancy documents from the Landlord. On September 16, 2022 they made their Application to the Residential Tenancy Branch. They described events prior to this, where a conflict on the August 2022 rent payment led to the Landlord's agent stating they could increase the monthly rent by 15%. The Tenant described their assumption that they would be receiving a rent increase form; however, on August 31 these were actually end-of-tenancy forms served to them by the Landlord.

One of the Landlord's children had moved some items into the rental unit; however, it appears they did not assume full occupancy. The Landlord cited the condition of the rental unit as the reason for this.

The Tenant's Advocate who was present in the hearing submitted that the form of both Two-Month Notice A and Two-Month Notice B was out-of-date. This constitutes a breach of s. 52, where an end-of-tenancy notice must comply with form and content. Further, this out-of-date form is missing a lot of current information that must be provided to the Tenant. Also, the two indications by the Landlord on these documents, as served to the Tenants, contradict each other fundamentally, and the Landlord's indication of a demolition/renovation/repair is now a separate process, and not provided for on the current version of a proper two-month notice form.

Analysis

The *Act* s. 49 grants legal authority to a landlord to end a tenancy for the reasons listed therein. The Landlord must issue a notice to end the tenancy. In this present matter, the Landlord has the burden of proof to show there is sufficient reason to end the tenancy. The subsection 49(7) specifies that a notice under this section must comply with s. 52, form and content of said notice.

The following s. 52 states, in order to be effective, the notice 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) . . . state the grounds for ending the tenancy,
- . . . and
- (e) when given by a Landlord, **be in the approved form.**

I find the forms utilized by the Landlord for each of the Two-Month Notice A and Two-Month Notice B were not in the approved form. They do not reflect the current wording of s. 49 of the *Act*, in which a demolition or conversion require 4 months' notice to a tenant. Moreover, there was, as of the time of the Landlord's service of Two-Month Notice A and Two-Month Notice B, no provision for renovation or repair in the rental unit requiring vacancy. That is a separate application process for a landlord directly to the Residential Tenancy Branch. In sum, the Landlord's indication on the form of a renovation/demolition/repair is statutorily incorrect, and without legal basis. I conclude this lack of legal basis cancels one of the grounds indicated on each of Two-Month Notice A and Two-Month Notice B.

Further, I find the indication of a demolition/renovation/repair contra-indicates the other reason given by the Landlord, that a family member must enter. Without any clarity of either

demolition/renovation/repair (aside from being without basis in the *Act*) in the form of permits or certificates for work required, it remains unexplained on the face of the document how other residents would live in the rental unit if such work of demolition/renovation/repair require the rental unit to be vacant.

Finally, the Landlord indicated on each of the Two-Month Notice A and Two-Month Notice B documents that there was a family corporation owns the rental unit. There is no proof of this otherwise in the Landlord's testimony, and I cannot discern why the Landlord would make this indication instead of indicating, more simply, that the rental unit would be occupied by a "close family member".

I therefore cancel each of Two-Month Notice A and Two-Month Notice B, for the reasons set out above.

Conclusion

For the reasons above, I order the Two-Month Notice A is cancelled, and the Two-Month Notice B is cancelled. The tenancy for each of Tenant A and Tenant B remain 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: January 31, 2023

Residential Tenancy Branch