



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant August 15, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 30, 2022 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing with E.S. to assist. The Landlord appeared at the hearing with C.C. to assist. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant sought an adjournment due to being sick with Covid or something else. The Tenant testified that they have been sick for three days and would have difficulty focusing on the issues in the hearing. The Landlord did not agree to an adjournment.

I considered rule 7.9 of the Rules and declined an adjournment. The Tenant had appeared at the hearing and had E.S. to assist them. The Tenant had not submitted compelling evidence, such as evidence from a medical professional, stating they were unable to participate in a hearing due to their health. Further, the issues raised in the Application are straightforward and I did not anticipate the hearing being long. Most importantly, this matter is about whether this tenancy will continue or end and the Landlord has waited almost six months to have the validity of the Notice determined. I found an adjournment would be very prejudicial to the Landlord. I told the Tenant we

would proceed and I would reconsider if an adjournment was necessary if I had concerns about the Tenant's ability to address the issues raised. We proceeded with the hearing which did end up taking more than the hour set. However, I found the Tenant was able to answer questions and address the relevant issues and therefore did not revisit the issue of an adjournment.

C.C. provided the correct rental unit address which is noted on the front page of this Decision.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord confirmed receipt of the hearing package.

The Tenant testified that they did not receive the Landlord's evidence. C.C. testified that two packages of evidence were served on the Tenant by registered mail with tracking numbers ending 373 and 343. The Landlord submitted documentary evidence of service. The documentary evidence shows the package with tracking number ending 373 was delivered October 27, 2022. I looked up tracking number ending 343 on the Canada Post website which shows the package was delivered January 13, 2023. After further discussion, the Tenant acknowledged they may have received the packages from the Landlord.

Based on the testimony of C.C., documentary evidence of service and Canada Post website information, I find the Tenant was served with the Landlord's evidence in accordance with section 88(c) of the *Residential Tenancy Act* (the "Act") and received the evidence October 27, 2022 and January 13, 2023. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service. The Landlord's evidence is admissible.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed the tenancy started January of 2011 and rent is due on the first day of each month.

The Notice was submitted. The Notice has an effective date of September 30, 2022. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's spouse.

The parties agreed the Notice was served, and received by the Tenant, July 30, 2022.

C.C. testified that the rental unit address is a house with an upper main residence and a basement suite. The Landlord lives in the upper main residence and the Tenant lives in the basement suite.

C.C. testified that the Landlord wants to use the basement suite for their own use due to medical issues that have caused the Landlord mobility issues. C.C. testified that the Landlord wants use of the entire house and that use of the basement suite would be safer for the Landlord because the Landlord would not have to climb as many stairs. C.C. testified that the Landlord has to climb stairs living in the upper main residence and this poses a risk of falling. C.C. testified that the Landlord would not have to climb stairs if they had use of the basement suite.

C.C. relied on medical evidence submitted to support their position.

The Tenant submitted that the Notice was actually issued due to an incident in July when police attended the house and executed a search warrant in the basement suite. The Tenant submitted that this incident lead the Landlord to want to end the tenancy and this is why the Notice was issued. The Tenant testified about issues they have had during the tenancy with guests and rent increases. The Tenant testified that the basement suite is not a legal suite. The Tenant disputed that the Landlord intends to use the basement suite and testified that the Landlord is in good health and has no issues walking in general or walking up and down stairs.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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.

The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. The Tenant received the Notice July 30, 2022, and filed the dispute August 15, 2022, within time because the 15th day fell on a Sunday and therefore went over to the Monday.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

RTB Policy Guideline 2A addresses the good faith requirement in section 49(3) of the *Act* and I have considered this guideline.

Based on the testimony of C.C. on behalf of the Landlord and the medical evidence submitted, I accept that the Landlord intends in good faith to take back the basement suite and use this space as part of their living space. I acknowledge the submissions of the Tenant; however, I find the medical evidence submitted to be compelling evidence to support the Landlord's position and I find the Landlord has met their onus to prove their intention in relation to the rental unit as well as the good faith requirement.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

I uphold the Notice and dismiss the dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* requires me to issue the Landlord an Order of Possession given I have upheld the Notice, dismissed the dispute of the Notice and found the Notice complies with section 52 of the *Act*. The Landlord asked that the Order of Possession be effective two days after service on the Tenant and therefore this is what has been issued.

I decline to award the Tenant reimbursement for the filing fee given they were not successful in the Application.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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

Dated: January 30, 2023

Residential Tenancy Branch