



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49;
- 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 waited until 11:15 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant and his advocate attended the hearing.

The tenant's advocate submits that on December 22, 2022, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the landlord by registered mail. A registered mail receipt and tracking number was provided in support of service. The tenant's advocate stated that the registered mail package was sent to the landlord's address for service as per the Two Month Notice.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

The tenant's application was filed within the time period required under the Act.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The Two Month Notice on file is dated November 24, 2022. The tenant states in his application that the Notice was received on December 7, 2022.

The tenant filed an application to dispute the Notice on December 20, 2022.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

The landlord did not participate in the hearing and as such has failed to provide sufficient evidence to justify grounds to issue the Two Month Notice. Accordingly, the Two Month Notice dated November 24, 2022, is hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenant may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenant's application to cancel the landlord's Two Month Notice, dated November 24, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with 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: January 24, 2023

Residential Tenancy Branch