



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: **CNL, OLC**
Landlord: **OPL, FFL**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

This hearing also dealt with the Landlord's cross application pursuant to the Act for:

1. An Order of Possession for a Two Month Notice to End Tenancy For Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 55 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, the Tenant and the Tenant's Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice served personally on August 31, 2022, Tenant confirmed receipt;
- the Tenant's Notice of Dispute Resolution Proceeding package served by registered mail on September 28, 2022, Landlord confirmed receipt, deemed served on October 3, 2022;
- the Landlord's Notice of Dispute Resolution Proceeding package served by attaching a copy to the Tenant's door on an unknown date, Tenant confirmed receipt, sufficiently served on October 28, 2022;
- the Tenant's evidence package served by attaching a copy to the Landlord's door on December 22, 2022, Landlord confirmed receipt, deemed served on December 25, 2022;

Pursuant to Sections 71, 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?

Landlord:

1. Is the Landlord entitled to an Order of Possession for a Two Month Notice?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on February 15, 2009. Monthly rent is \$500.00 payable on the first day of each month.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was October 31, 2022.

The Tenant testified that only two pages of the Two Month Notice were served on her. The Landlord testified that that was what he was given to serve on the Tenant.

The Tenant seeks an Order for the Landlord to comply with the Act

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 52 of the Act specifies how the form and content of legal notices issued under the Act must occur. It states:

Form and content of notice to end tenancy

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 mine)

The Landlord served two pages of the Two Month Notice to the Tenant on August 31, 2022. This legal notice has four pages that contains all the information parties need to understand their rights about their tenancy. I find that the Landlord did not serve the Two Month Notice in the approved form to the Tenant pursuant to Section 52 of the Act. I find that the Landlord has not met his burden and I cancel the Two Month Notice and the tenancy will continue until ended in accordance with the Act.

As the Landlord was unsuccessful in his claim, he must bear the cost of the application filing fee.

Conclusion

The Tenant's application is granted. I Order the Landlord to comply with the Act, Regulation and tenancy agreement. The tenancy will continue until 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 Act.

Dated: January 16, 2023

Residential Tenancy Branch