



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAVE ON BLACK TOP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL, FFT**

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. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. 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 the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Tenant confirmed that she personally served the Landlord by handing the package to the Landlord's son who answered the door with the Notice of Dispute Resolution Proceeding package for this hearing on September 16, 2022 (the "NoDRP package"). The Tenant's mother and daughter witnessed service of the NoDRP package. The Tenant's mother provided affirmed testimony that the Tenant served the NoDRP

package on the Landlord by handing the package to the Landlord's son who answered the door. The Tenant's mother said her daughter waved to the Landlord who she could see sitting at a table. I find that the Landlord was served with the NoDRP package on September 16, 2022 in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant 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 Tenant confirmed that this tenancy began as a fixed term tenancy on January 1, 2017. The fixed term ended on January 1, 2019, then the tenancy continued on a month-to-month basis. The current Landlord purchased the home in approximately 2020. Monthly rent is \$1,450.00 payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were collected at the start of the tenancy. The Tenant believes the new Landlord still holds the deposits.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the child of 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 another tenant living on the residential property was evicted for unpaid rent. She thought this may be the reason why the Landlord did not attend the hearing.

The Landlord did not attend the hearing to provide evidence on the Two Month Notice. The Tenant seeks to cancel the notice.

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Landlord did not attend the hearing to give evidence about why this tenancy needs to end. Based on the undisputed testimony of the Tenant, and the Landlord's absence at the hearing, I cancel the Landlord's Two Month Notice. The Landlord has the onus to prove the grounds of why the tenancy needs to end. The Landlord did not attend the hearing to speak to his notice, and I find it fails. The tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's Two Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover her application filing fee.

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 20, 2023

Residential Tenancy Branch