



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL**

Introduction

This hearing dealt with the Tenants' 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 Sections 49 and 62 of the Act.

The hearing was conducted via teleconference. The Tenants 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 Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence on September 16, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenants referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on September 21, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

Naming parties

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenants' application, the Tenants named their minor son as a Tenant in the matter. I asked the Tenants if I could remove their minor son they named in their application, and they agreed. The correct Tenants' name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I have amended the Tenants' party name which reflects the two names in the tenancy agreement for this matter.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?

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 Tenants uploaded their tenancy agreements and they confirmed that this tenancy began as a fixed term tenancy on October 20, 2020. A second fixed term tenancy began on June 1, 2021, and ended on October 31, 2022, now the tenancy continues on a month-to-month basis. Monthly rent is \$2,700.00 payable on the first day of each month. A security deposit of \$1,350.00 and a pet damage deposit of \$1,350.00 were collected at the start of the tenancy and are still held by the Landlord.

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 Landlord did not attend the hearing, and the Tenants seek to cancel the Landlord's Two Month 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 Tenants' 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 Tenants, and the Landlord's absence at the hearing, I cancel the Landlord's Two Month Notice. The tenancy will continue until ended in accordance with the Act.

Conclusion

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

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 19, 2023

Residential Tenancy Branch