



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

The Tenant filed their Application for Dispute Resolution on September 20, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"), and more time in which to make that Application. They also sought to limit the Landlord's right of entry, the Landlord's compliance with the law/tenancy agreement, and reimbursement of the Application filing fee.

The Tenant amended their Application on January 16, 2023, seeking a reduction in rent for repairs, services or facilities agreed upon but not provided.

On October 3, 2022 the Landlord filed an Application for an Order of Possession based on the same Two-Month Notice, and reimbursement of the Application filing fee. The Tenant's Application was already in place and the Residential Tenancy Branch joined the two Applications.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on February 3, 2023. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the other's Notice of Dispute Resolution Proceeding document and prepared documentary evidence.

Preliminary Matter – relevant issues

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on Two-Month Notice issued by the Landlord. Therefore, I dismiss the Tenant's other grounds for dispute resolution, with leave to reapply: suspension/set conditions on the Landlord's right to enter the rental unit, reduction in rent, and the Landlord's compliance with the law/tenancy agreement.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is not successful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord in their evidence provided a copy of the tenancy agreement that the two parties signed on April 26, 2021. This shows the rent amount of \$1,200 payable on the first day of each month. The agreement was for an initial 6-month term, then continuing on a month-to-month basis.

Both parties in their evidence provided a copy of the Two-Month Notice, signed by the Landlord on August 30, 2022. The Landlord indicated on page 2 that the "landlord or the landlord's spouse" would use the rental unit, setting the end-of-tenancy date to November 4, 2022.

The Landlord provided a "Proof of Service" document showing that they served this document to the Tenant via registered mail on August 30. The Landlord provided other documents and images to show that they served the Tenant originally via registered mail. The Landlord alleged that the Tenant refused to accept the registered mail.

The Landlord sent an email to the Tenant on September 18, 2022. This was an inquiry about whether the Tenant received the registered mail sent on August 30, 2022. The Landlord stated: “from the tracking number we know that you haven’t picked it up.” And: “The package sticker was posted to your door”. The Landlord accounted for the end-of-tenancy date of November 4, to add the appropriate number of days to the end date to account for the transit of registered mail, approximately 3 days after October 31, 2022. The Landlord stated that, despite not being picked up, their use of registered mail “still counts as serving your notice legitimately.” The Landlord attached an image of the Two-Month Notice, and their “Proof of Service” document.

The Tenant provided this same email in their evidence for this hearing.

The Landlord sent a text message to the Tenant on September 28, 2022 to verify that the Tenant received the email from the Landlord sent on September 18, and the registered mail sent on August 30, 2022.

The Landlord placed a copy of the Two-Month Notice in an envelope and attached this to the door of the rental unit on September 30, 2022. In the Landlord’s evidence is photo of this, dated September 30, 2022. This is a copy of the same Two-Month Notice, signed on August 30, 2022, giving the end-of-tenancy date as November 4, 2022.

The Tenant disputed the Landlord’s good faith in issuing the Two-Month Notice. This was based on previous conflict with the Landlord. The Tenant stated that the Landlord had made mention of ending the tenancy for this reason some time prior. In the hearing, the Landlord noted the size of the rental unit home, questioning whether the Landlord truly needed that size of home for themselves and their few family members.

Analysis

The *Act* s. 49(3) states that a landlord may end a tenancy by giving a Two-Month Notice “if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

Following this, s. 49(8) states that within 15 days of receiving a notice a tenant may dispute that notice. Where a tenant does not make the application within 15 days, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I find the Landlord served the Two-Month Notice via email on September 18, 2023. This email appears in the Tenant's record; therefore, I find the Tenant received this email with the copy of the Two-Month Notice attached. Further, the Tenant applied to the Residential Tenancy Branch for dispute resolution on September 20; this is two days after they received the Two-Month Notice. I find the Landlord served the document to the Tenant, to a verified email address; I accept service as completed as per s. 88(j) of the *Act*, and more specifically s. 43(1) of the *Residential Tenancy Regulation*.

I find the Tenant properly filed an Application for Dispute Resolution at the Residential Tenancy Branch within 15 days after receiving the September 18 email as required.

The Landlord provided the following on their Application: "I [the Landlord] am moving back into this home on November 4, 2022. My elderly mother will also be moving in with me as well as my son."

The *Act* s. 52 specifies that a notice to end tenancy must be in writing and must give the address of the rental unit.

The rental unit, as provided for on the tenancy agreement, is the basement suite in this rental unit property. The Two-Month Notice does not specify that basement suite rental unit on page 1. I find this invalidates the notice, as per s. 52(b) which requires the exact address of the rental unit. I find the Two-Month Notice does not distinguish between the upstairs-downstairs rental units, even though the Landlord separately served an end-of-tenancy notice to the upstairs residents, as they stated in the hearing.

The Landlord on their Application noted that they would move into the rental unit with their mother and son. I find the Landlord is not distinguishing between the upstairs and downstairs rental unit by making this statement on their Application. In the hearing, the Landlord indicated that their mother would take up residence in the basement suite rental unit, as they had done in the past. The Landlord did not make that indication on page 2 of the Two-Month Notice; I find this is a contraindication on the document itself.

The Landlord did not distinguish the basement rental unit on page 1 of the document. This, combined with what I find is an inaccuracy on page 2 of the document, indicates the incorrect content of the document, as per s. 52(b), and the incorrect reason for needing the rental unit vacant on page 2. These two discrepancies invalidate the Two-Month Notice. I find the Two-Month Notice is invalid; therefore, I order its cancellation.

I grant the Tenant's Application for the cancellation of the Two-Month Notice; reciprocally, I dismiss the Landlord's Application for an order of possession, without leave to reapply.

As the Tenant was successful in their Application, I find the Tenant is entitled to recover the \$100 filing fee. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

The Landlord was not successful in their Application; therefore, I dismiss their claim for reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I grant the Tenant's Application for a cancellation of the Two-Month Notice. I dismiss the Landlord's Application for an order of possession. The tenancy shall continue.

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

Dated: February 8, 2023

Residential Tenancy Branch