



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice").

An agent appeared for the tenant and the landlord appeared along with his son who was translating for him.

As for service, the tenant's agent testified that the proceeding package was served to the landlord, in person, when the tenant paid rent last year. The landlord responded that he received notification of the proceeding by way of a reminder email from the Residential Tenancy Branch (RTB) on March 2, 2023.

The tenant's agent did not have any proof of service to point to in support of proving service upon the landlord; however, the tenant's agent pointed out that the landlord has failed to provide the tenant with a service address.

I see that the reminder email sent to the landlord on March 2, 2023 but it does not contain the passcode for this hearing and there no record that he called the RTB to obtain the Notice of Dispute Resolution Proceeding or passcode. As such, I found the landlord's submission dubious.

In any event, the landlord had provided written submissions indicating he understood that this proceeding was to deal with a Two Month Notice he had issued to the tenant. Accordingly, I deemed the landlord sufficiently served and I continued to hear from the parties.

On another procedural note, three co-tenants are identified on the application; however, the tenancy agreement and Two Month Notice only identify one tenant. Further, the

tenant named on the tenancy agreement and the Two Month Notice is the only applicant who signed an authorization letter for the tenant's agent. In light of these materials, I was unsatisfied the other two applicants have standing as tenants and I amended the style of cause to name the only tenant identified on the tenancy agreement and the Two Month Notice.

Also, I ordered the landlord to provide a service address. The landlord appeared reluctant to do so until I informed him that it was a legal requirement for him to do so. The landlord orally provided his home address as his service address and I have recorded it on the cover page of this decision for the tenant to use in the future, as necessary.

Issue(s) to be Decided

Should the Two Month Notice be upheld or cancelled?

Background and Evidence

The tenant's agent submitted that the tenants seek cancellation of the Two Month Notice. The landlord was in agreement with cancellation of the Two Month Notice.

I note that in the landlord's written submission and screenshots of text messages between him and the tenant, the landlord had acknowledged the Two Month Notice was invalid as it was devoid of the landlord's service address and the tenant had pointed out that the parties had a fixed term tenancy agreement. The landlord also sent a message to the tenant on March 1, 2023 indicating his plans to move in had changed and that he was willing to make a new tenancy agreement.

Analysis

The tenant's request for cancellation of the Two Month Notice is granted for a number of reasons. Firstly, the Two Month Notice does not include a service address for the landlord, as required on the form itself. The need to include the landlord's service address on the Two Month Notice is especially important since the landlord failed to provide it on the tenancy agreement as required in section 12 of the Act. Secondly, the effective date on the Two Month Notice reads 01/01/2023 which does not comply with section 49 of the Act because the parties have a fixed term tenancy agreement in effect until April 30, 2023. Thirdly, at the hearing the landlord was in agreement that the Two Month Notice should be cancelled.

Since the Two Month Notice has been cancelled, the existing tenancy agreement continues until such time it legally ends under one of the reasons provided in section 44 of the Act.

As further information for the parties, it is unnecessary to enter into a new tenancy agreement when the fixed term expires. Rather, a tenancy continues on a month to month basis unless the parties enter into another fixed term by mutual agreement to do so.

Given the landlord issued an unlawful Two Month Notice, resulting in the tenant filing this Application for Dispute Resolution and payment of a filing fee, I award the tenant recovery of the \$100.00 filing fee from the landlord. The tenant is authorized to deduct \$100.00 from a subsequent month's rent to recover this award.

Conclusion

The Two Month Notice is cancelled and is no force or effect. The existing tenancy agreement continues at this time until it comes to an end in one of the ways provided under section 44 of the Act.

The tenant is authorized to deduct \$100.00 from a subsequent month's rent to recover the filing fee from the landlord.

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: March 16, 2023

Residential Tenancy Branch