



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPL MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use (the 2-Month Notice)
- A monetary order for unpaid rent

The landlord attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that she sent the Notice of Dispute Resolution Proceeding and evidence to the Tenant by registered mail on November 10, 2022. Proof of mailing was provided. Pursuant to section 90 of the Act, I find this package is deemed to be received by the Tenant 5 days after it were sent.

The landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord stated that no rent is currently owed at this time. As such, I have amended her application accordingly.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*, based off the Notice?

Background and Evidence

The Landlord stated that she issued the 2 Month Notice so that her brother can move in. The Landlord served the Tenant, in person, with the 2 Month Notice on July 29, 2022. Proof of service was provided.

The Notice indicated the following grounds for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

A copy of the Notice was provided into evidence, and under the above noted ground, the Landlord left the following portion of the Notice blank:

Please indicate which close family member will occupy the unit.

- ☐ The landlord or the landlord's spouse
- ☐ The child of the landlord or landlord's spouse
- ☐ The father or mother of the landlord or landlord's spouse

During the hearing, the Landlord clarified that it is her brother who is going to move in.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49(3) of the *Act* permits a landlord to end a tenancy for Landlord's Use. A tenant who receives a notice to end tenancy under this part of the *Act* has 15 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 49(9) of the *Act*. Provided a valid Notice was issued (that complies with form and content requirements under section 52 of the *Act*), the Landlord is entitled to an Order of Possession.

In this case, the Landlord issued the Notice because she wants her brother to move into the rental unit. However, after reviewing the Notice, I am not satisfied that it complies with section 52 of the Act [form and content of notice to end tenancy]. More specifically, the Landlord failed to fully select the grounds, as noted above. Furthermore, I note the Landlord stated that it is her brother who is going to move in. However, I find it important to note that this does not meet the criteria of a “close family” member, under this part of the Act.

As such, I find the Notice is invalid, and I hereby cancel it. The Notice is of no force or effect.

Conclusion

The Landlord’s application is dismissed, in full, without leave.

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 7, 2023

Residential Tenancy Branch