



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

On December 6, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property.

The matter was set for a conference call hearing. The Landlord’s agent and the Tenant appeared at the hearing. The Landlord’s agent was assisted by a translator. Realtors for the Landlord and purchaser also attended the hearing. The purchaser of the property was present.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and 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.

Preliminary and Procedural Issues

The Tenant provided the RTB with a copy of the Two Month Notice that he received from the Landlord on November 26, 2022. The Tenant stated that the Two Month Notice was served to his son. The Tenant stated that another copy of the Two Month Notice was posted to his door by the Landlord.

The Tenant provided the Residential Tenancy Branch with documentary evidence of two phone screenshots showing rental vacancies. The Tenant stated that he never served the two screenshots to the Landlord. The Tenant was informed that since he did not disclose the two screenshot documents to the Landlord prior to the hearing they will not be considered.

Issue to be Decided.

- Is there sufficient reason to end the tenancy based on the service of the Two Month Notice?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in late 2009, and is on a month-to-month basis. Rent in the amount of \$950.00 is to be paid to the Landlord by the first day of each month.

The Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property ("the Two Month Notice"). The Tenant provided a copy of the Two Month Notice they received from the Landlord. The Two Month Notice is signed by the Landlord's power of attorney; however, it is not dated.

The reason for ending the tenancy within the Notice is:

All of the conditions for the sale of the rental; unit have been satisfied and the purchaser has asked the Landlord in writing to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is January 31, 2023.

The Two Month Notice provides information for tenants who receive the notice. The notice provides that a tenant has the right to dispute the notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants received the Two Month Notice on November 26, 2022, and disputed the Two Month Notice on December 6, 2022, within the required time period.

The Tenant was asked whether he had made any alterations to the Two Month Notice and he replied "no". The Tenant testified that the Two Month Notice he provided to the

Residential Tenancy branch is the Notice that his son received directly from the Landlord. The Tenant was asked if he had a copy of the Two Month Notice that was posted to his door and he replied “no” he does not know where it is. The Tenant testified that the Two Month Notice he received is signed by the Landlord but is not dated.

In the Landlord’s evidence there is a copy of a Two Month Notice that is signed and dated. The Landlord testified that they may have signed one of the Two Month Notices that were served to the Tenant. The Landlord stated that they took a picture of the Two Month Notice after it was posted to the Tenants’ door. Later in the hearing the Landlord stated that they located the photograph which is not in the evidence before me and that it did not include a date.

I asked the Landlord how it is possible that they served the Tenant with the signed and dated Two Month Notice, if the copy he received and provided does not contain a date? The Landlord then stated that perhaps the Tenant altered the Two Month Notice that he provided to the Residential Tenancy Branch. The Tenant had already testified that he had not altered the Two Month Notice.

The Landlord repeatedly argued that it is unfair for me to consider the Two Month Notice the Tenant received from the Landlord and which he provided to the RTB because the Tenant did not serve the Landlord with a copy of the Two Month Notice.

Analysis

Section 44(1) of the Act provides that a tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [tenant's notice];
 - (i.1) section 45.1 [tenant's notice: family violence or long-term care];
 - (ii) section 46 [landlord's notice: non-payment of rent];
 - (iii) section 47 [landlord's notice: cause];
 - (iv) section 48 [landlord's notice: end of employment];
 - (v) section 49 [landlord's notice: landlord's use of property];
 - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
 - (vii) section 50 [tenant may end tenancy early];

- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Section 47 of the *Act* provides that a notice to end tenancy must comply with section 52 of the *Act* *[form and content of notice to end tenancy]*. Section 52 of the *Act* provides that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed **and dated** by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

[my emphasis]

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I reviewed the Two Month Notice provided by the Landlord and the Two Month Notice provided by the Tenant and I find that the two Notices are identical except, that the Tenants' copy does not contain a date.

I have also considered a statement made in the hearing by the Landlord that the photograph they have of the Two Month Notice posted on the Tenant's door does not contain a date.

I find that it is more likely than not that the Landlord made an error by failing to provide a date on both of the Two Month Notices that were served to the Tenant. I find that it is not unfair of me to consider the Two Month Notice that the Tenant received from the Landlord on the basis that he did not serve it back to the Landlord. The Landlord is already aware of this evidence because the Landlord served it to the Tenant and furthermore, the Landlord stated that their own evidence of a photograph of the Notice posted to the Tenants' door does not show a date.

I find that the Landlord did not issue the Tenant with a notice to end tenancy in the proper form as required under section 52 of the Act. The Two Month Notice served to the Tenants was not dated by the Landlord. The Two Month Notice is not an effective Notice. The Two Month Notice is dismissed.

The Tenants' application to cancel the Two Month Notice is granted. The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants' application to cancel the notice is successful, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. The Tenants are authorized to withhold \$100.00 from one (1) future rent payment.

I am aware that the rental property has sold and that a purchaser of the property is waiting to occupy the residential property, and that the clerical error on the part of the Landlord will delay possession. With this in mind, in accordance with section 63 of the Act, I offered the parties an opportunity to settle their dispute and record the settlement in the form of a decision. A settlement agreement could not be reached. The parties were informed that they could try and settle the issue after the hearing concluded and that it would be wise to record any agreement reached in writing.

Conclusion

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property is granted. The Two Month Notice served on November 26, 2023, is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: April 14, 2023

Residential Tenancy Branch