



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 12, 2023 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated October 17, 2022; and
- an order granting the return of the filing fee.

The Tenant, the Tenant's Advocate, the Tenant's Translator, the Landlord, and the Landlord's Translator attended the hearing at the appointed date and time.

At the start of the hearing, the Landlord confirmed receipt of the Tenants' Application and evidence. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Landlord did not submit any evidence in response to the Tenants' Application.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an 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.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Two Month Notice, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2020. Currently, the Tenants pay rent in the amount of \$2,300.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,150.00. The tenancy is still ongoing.

The Landlord stated that they served a Two Month Notice dated January 31, 2023 on January 31, 2023 by Registered Mail and regular mail.

The Tenant stated that they received a Two Month Notice on January 31, 2023, however, the Two Month Notice received is dated October 17, 2022.

I note that the only Two Month Notice submitted into evidence for my consideration is the Two Month Notice to End Tenancy dated October 17, 2022. There is no Two Month Notice dated January 31, 2023. The Tenant stated that they have not received a Two Month Notice dated January 31, 2023.

Analysis

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

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 59 provides that an Application for Dispute Resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceeding. Rules 2.5 and 3.1 require that a tenant disputing a notice to end tenancy must provide a copy of the notice to end tenancy they seek to dispute at the time of filing the Application for Dispute Resolution and serve it upon the respondent along with the proceeding package. These requirements are in keeping with the principles of natural justice and intended to ensure a fair proceeding.

Below, I have reproduced Rule 2.5 for the parties' reference:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

[My emphasis underlined]

In seeking to cancel a notice to end tenancy or when seeking an order of possession, I can think of no other document that is more relevant than the notice to end tenancy. Neither party provided a copy of the Two Month Notice to End Tenancy dated January 31, 2023. The Tenant stated that they never received a Notice dated January 31, 2023. The Tenants applied to dispute a Two Month Notice dated October 17, 2022. As the Landlord indicated that they served a different Two Month Notice to End Tenancy which is not before me, I find that the Tenant's Application is successful given the Landlord has provided no evidence of a Two Month Notice dated January 31, 2023 or that it was served to the Tenants in accordance with the *Act*.

As the Tenants have been successful, I find they entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from one (1) future rent payment.

Conclusion

The Tenants' Application is successful. The Two Month Notice dated October 17, 2022 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenants are entitled to deduct \$100.00 from the next month's rent for recovery of the filing fee.

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: May 15, 2023

Residential Tenancy Branch