



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on May 5, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).

The Landlord was present at the hearing with her daughter (referred to as the Landlord). The Tenants were present at the hearing. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's Notice of Hearing and documentary evidence and although they were served late, she was willing to proceed regardless.

The Landlord only provided copies of her evidence to the RTB, and not to the Tenant as part of this hearing process. However, the Tenants were willing to proceed and admit the Landlord's evidence, regardless of the fact it was not served to them.

Neither party took any issue with service of the documents and both parties were willing and able to proceed.

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.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background, Evidence and Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Tenants received the Notice on March 29, 2023.

The Notice indicates the following reasons for ending the tenancy in the second page:

- 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).

I note the 2 Month Notice issued by the Landlord is over a decade old, and is from 2011. I also note this form has changed since that time, and the grounds have been modified. Under the new version of the 2 Month Notice, the Landlord must select *which* close family member is going to move in. The new version has the following grounds:

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).

- *The Landlord or the Landlord's Spouse*
- *The Child of the Landlord or the Landlord's Spouse*
- *The Father or Mother of the Landlord or Landlord's Spouse*

Only one of the three bullet points may be selected on the Notice, which is a departure from the previous form, which allows the Landlord to select all of them at once. The specificity matters and becomes important, especially if there is a subsequent claim for compensation under section 51 of the Act. In any event, I find the Landlord failed to use the approved, and current, form for this 2 Month Notice.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

As such, I do not find it meets the form and content requirements set forth under section 52 of the Act.

In light of the above, I grant the Tenant's request that I cancel the Notice. Accordingly, the tenancy continues at this time and until such time it legally ends.

It is important to note that I have made no finding as to whether the landlord has a basis under the Act for ending the tenancy. The landlord remains at liberty to re-issue a Notice to End Tenancy on the current form, should the landlord decide to pursue eviction.

As the Tenant was substantially successful with the application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Notice issued on March 28, 2023 has been cancelled and the tenancy continues at this time.

The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

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 10, 2023

Residential Tenancy Branch