

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's Four Month Notice to End Tenancy Issued for Demolition, or Conversion of Rental Unit to Another Use (Four Month Notice) under section 49 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- vacant possession of the rental unit to perform renovations or repairs

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Tenant testified that she served the Proceeding Package and evidence for her application for dispute resolution via registered mail on February 3, 2025. The Canada Post registered mail receipt for same was entered into evidence. The Landlord confirmed receipt but could not recall on what date. I find that the Landlord was deemed served with the Tenant's Proceeding Package and evidence on February 8, 2025, 5 days after its registered mailing in accordance with sections 89 and 90 of the Act.

The Landlord testified that he does not think that he served the Tenant with his Notice of Dispute Resolution Proceeding. The Tenant confirmed that she did not receive the Landlord's Notice of Dispute Resolution Proceeding. The Landlord was required under section 89 of the Act to serve the Tenant with the Notice of Dispute Resolution Proceeding. I find that it would be procedurally unfair to the Tenant to hear the Landlord's Application for Dispute Resolution because the Tenant was not provided with notice of the Landlord's claims against her and was not provided with a fair opportunity to review and respond to the Landlord's claims. The Landlord's application for dispute resolution is therefore dismissed with leave to reapply for failure to serve the Tenant in accordance with section 89 of the Act.

The Landlord testified that he served the Tenant with 5 packages via registered mail and then changed his testimony to 3 separate packages via registered mail. The Tenant confirmed receipt of 2 separate packages; however, one of the packages contained 4 envelopes. I instructed the Tenant to inform me in the hearing if she did not have any evidence presented by the Landlord. The Tenant did not notify me that she did not have any of the evidence presented in the hearing. I am satisfied that the Tenant was served with all of the Landlord's evidence, in accordance with section 88 of the Act. The Tenant testified that she received the last package from the Landlord on February 21, 2025, after the deadline for the Landlord's service of evidence passed. The Tenant testified that she had time to review that evidence before the hearing. I find that while the Landlord's last evidence was served late, the Tenant is not prejudiced by its consideration because the Tenant testified that she had time to review it prior to this hearing. The late evidence is accepted for consideration.

Preliminary Matters

The following issues are dismissed with leave to reapply:

- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Residential Tenancy Branch Rules of Procedure, Rule 6.2, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

Is the Tenant entitled to cancellation of the Four Month Notice?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on November 14, 2016, with a monthly rent of \$857.20 due on the first day of each month.

The Landlord testified that he served the Tenant with the 4 Month Notice on December 31, 2024 via email and registered mail. The Tenant testified that she received the 4 Month Notice on January 7, 2025 via registered mail. The Tenant testified that she does not have a service agreement with the Landlord to received documents via email. The Tenant filed to dispute the 4 Month Notice on January 31, 2025.

The 4 Month Notice was entered into evidence and states that the Landlord is ending the tenancy because he is going to convert the rental unit to a non-residential use. The 4 Month Notice states that no permits and approvals are required by law to do this work and that the Landlord plans on renovating the house, clearing tress and debris from around the house.

The Landlord testified that he wants to use the rental property for his own personal use, the personal use of his family and for use by a caretaker.

The Tenant testified that the Landlord also served her with a sample Four Month Notice to End Tenancy for Landlord's Use of Property (the Second Four Month Notice). The Second Four Month Notice entered into evidence shows that the Landlord crossed out the sample information and entered some of the Tenant's information. The Landlord did not generate the Second Four Month Notice on the Residential Tenancy Branch's web portal.

Analysis

Section 49(6)(f) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use.

The Landlord testified that he intends to use the rental property for his owns use, the use of his family and for a caretaker. I find that all of the uses described by the Landlord are residential in nature. I find that the Landlord is not permitted to end the tenancy under section 49(6)(f) of the *Act* using RTB Form #29 because the Landlord does not intend to convert the rental property to a non-residential use. The Landlord's application to cancel the Four Month Notice is therefore dismissed without leave to reapply.

To end a tenancy for use of a caretaker under section 49(6)(e) of the *Act*, the Landlord is required to serve the Tenant with RTB Form #29C, which is separate and distinct from the Four Month Notice under dispute in this application for dispute resolution. RTB Form #29C must be generated using the Residential Tenancy Branch's web portal. Notices that have been generated using the web portal will have a unique Notice ID in the top left corner.

To end a tenancy for Landlord's use of property under section 49(3) of the *Act*, the Landlord is required to serve the Tenant with RTB Form #32L. RTB Form #32L must be generated using the Residential Tenancy Branch's web portal. Notices that have been generated using the web portal will have a unique Notice ID in the top left corner. The

Second Four Month Notice entered into evidence was not generated using the web portal and is therefore void and unenforceable.

Conclusion

The Landlord's application for dispute resolution is dismissed with leave to reapply.

The Tenant's application to cancel the Four Month Notice is granted. The Four Month Notice is cancelled and of no force or effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 25, 2025

Residential Tenancy Branch