



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On November 28, 2022, the tenant applied for:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated November 26, 2022 (the November Two Month Notice);
- an order suspending or setting conditions on the landlord's right to enter the rental unit or site; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Preliminary Matters

Dismissal of unrelated claim

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismissed with leave to reapply the tenant's claim for an order suspending or setting conditions on the landlord's right to enter the rental unit or site.

Res judicata

On November 24, 2022 the parties appeared before an arbitrator of the Residential Tenancy Branch for a hearing on a prior application of the tenant, in which the relief sought included an order cancelling a Two Month Notice dated June 23, 2022 (the June Two Month Notice).

In their November 25, 2022 decision, the arbitrator ordered that the June Two Month Notice was cancelled as the landlord failed to prove the reason for the Notice, and that they had acted in good faith in serving it on the tenant.

On November 26, 2022, the landlord served the tenant with the November Two Month Notice.

The tenant argued that the matter regarding the November Two Month Notice before me was *res judicata* because the circumstances surrounding the service of the two Notices were the same.

In support of their argument, the tenant noted that the landlord served the November Two Month Notice approximately five hours after the tenant received the November 25 decision. The tenant submitted that both Notices stated that the child of the landlord or landlord's spouse would occupy the unit, and that much of the landlord's submitted evidence for this proceeding would have been available for the November 24 hearing. The tenant submitted that thought the landlord had failed to bring his best case on that day, it did not mean that the evidence from the November 24 hearing was irrelevant, and that the November 25 decision should be ignored.

The landlord argued that the matter before me was substantively different because the November Two Month Notice was served so that a different child could occupy the rental unit.

The landlord submitted that the current issue was whether he was acting in good faith when he served the Two Month Notice on November 26, 2022, and that the evidence to be considered was that from June 2022 through to the date of the hearing, stating that it was different evidence from a different time period.

The tenant submitted that though in the hearing the landlord had testified that he served the Two Month Notice to permit a different child to occupy the rental unit, the landlord's testimony was inconsistent, as he also stated in the hearing his intention for his daughter to move in. The tenant submitted that in the previous hearing the landlord also stated his intention was to have his daughter move in.

The landlord responded that the intention of the June Two Month Notice was to permit his son to move in, as his daughter had not been ready to do so. The landlord testified that the intention of the November Two Month Notice was to permit his daughter to move in.

On page 6 of the November 25 decision, the arbitrator stated that the tenant submitted many documents in support of her claim, and that "she claimed the landlord repeatedly informed her that unless she would agree to increase the rent, he would evict her and move his daughter into the unit." The decision then states: "While the landlord acknowledged the accuracy of the communication between the parties as reported by the tenant, he claimed his main concern when [sic] he issued the Two Month Notice was for his daughter and son to live in the unit."

The November 25 decision indicates that the landlord referred to his daughter moving into the unit, and also referred to both his son and his daughter moving in. In the hearing, the landlord testified that his intention for serving the November Two Month Notice was for a different child to occupy the unit, stating that child is his daughter.

I find in this case that the principle of *res judicata* applies. Given the lack of clarity as to which child or children the landlord previously intended to occupy the unit, I reject the landlord's assertion that the matter before is one of a different set of circumstances than those before the previous arbitrator.

As I find this matter has already been decided, I decline to hear on it. The November Two Month Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in their application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The November Two Month Notice is cancelled. The tenancy will continue until it is 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 06, 2023

Residential Tenancy Branch