



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a 2 Month Notice to End Tenancy for the Landlord's use of property and to recover the filing fee paid for the application.

The Tenant and advocate and the Landlord and interpreter appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in documentary form, and to cross examine each other.

Preliminary Issues

The Landlord filed a written submission, requesting that the Notice to End Tenancy be upheld, that an Order of Possession be issued and that the Tenant bear his own application costs. The Landlord, however, did not provide documentary evidence to prove that he had issued the Tenant a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice"), in accordance with section 49 of the *Residential Tenancy Act*.

Issue(s) to be Decided

Has the Landlord established that the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit?

Background and Evidence

This month to month tenancy began on or about October 1, 2011, current monthly rent is \$330.00 and a security deposit was not paid by the Tenant. There is no written tenancy agreement.

The subject of this dispute is a *2 Month Notice to End Tenancy for Landlord's Use of Property*. The parties testified that the Notice was issued on May 11, 2011, via personal

delivery, with a move out date listed as July 15, 2011. I heard testimony that the reason indicated on the Notice is that the rental unit will be occupied by the landlord.

The Notice was not submitted into evidence by either party.

The Landlord submitted that the rental unit is part of the basement and is the only rental suite in the house. The Landlord submitted that he and his family live in the top two floors, but that the entire home was only 1370 square feet, with only one washroom available for use on the two top floors. The Landlord submitted that his family was expanding and that he required the use of the basement for his own personal use.

The Tenant submitted that the Landlord has given different reasons for wanting him to move, including that he, the Landlord, was going to sell the home or alternatively, that he was being pressured from the insurance agent about the rental suite.

The Tenant submitted that the Landlord's brother needed the extra space and that the brother is not a close family member.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking to end the tenancy due to this breach and has the burden to prove the reason indicated on the Notice, that the rental unit will be occupied by the Landlord.

A Notice to End Tenancy can only be enforced if it complies with the requirements of section 52 of the *Act*. Without a copy of the Notice to End Tenancy that the Landlord served on the Tenant, I cannot conclude that the Notice is effective and therefore enforceable.

I therefore find that the Landlord had insufficient evidence to show the Tenant was issued a valid 2 Month Notice to End Tenancy and I deny his request for an Order of Possession.

I further find that the Tenant has submitted insufficient evidence to support his application, and I dismiss the application, with leave to reapply.

Conclusion

I HEREBY DISMISS the Tenant's application, with leave to reapply.

I deny the Landlord's request for an Order of Possession.

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: June 20, 2011.

Residential Tenancy Branch