



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNSD, 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 also amended her application and requested a monetary order for money owed or compensation for damage or loss.

The parties and the landlord's attorney appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, and in documentary form, and to cross examine each other.

Preliminary Issue:

A discussion ensued at the beginning of and during the hearing regarding the tenant's additional request for a monetary order contained in her amended application. Both issues were explored, but in the interest of addressing the tenant's claim for an order cancelling the Notice to End Tenancy immediately, I made the determination that this issue was of the more serious nature under the Act and is unrelated to the request for a monetary order. As a result, I have severed the tenant's amended application, with a provisional ruling that the remaining application be dismissed without leave to reapply.

However, the tenant requested that I not dismiss her claim for monetary compensation, but rather adjourn the hearing for that portion of her application. After taking the tenant's request into consideration and hearing the responsive testimony from the landlord and his attorney, I have decided to grant the tenant's request to adjourn that portion of the tenant's amended application, with guidance from Residential Tenancy Branch Rules of Procedure 6.2 and 6.3, as well as section 62 of the Residential Tenancy Act (the "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 two year, fixed term tenancy began on October 1, 2008, continued on a month to month basis thereafter, monthly rent is \$1,350.00 and a security deposit of \$675.00 was paid by the tenant on October 1, 2008.

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") issued on June 2, 2011, delivered via posting on the door, with a move out date listed as July 31, 2011. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

Pursuant to the rules of procedure for the Residential Tenancy Act (the "Act"), the landlord proceeded first in the hearing and testified as to why the tenant had been served with the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The landlord testified that he was thinking of selling the house and had been talking to real estate agents about a possible sale, although the home is not yet listed for sale.

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.

Under the Act, a landlord may end a tenancy for landlord's use pursuant to section 49 of the Act. However, in the hearing, the landlord made no attempt to justify this cause listed on the Notice, indicating only that he was thinking of selling the property, which is not a reason permitted under the Act or Notice to end a tenancy.

I therefore find the Notice is not valid.

Based on this finding, I find that the 2 Month Notice to End Tenancy for Landlord's Use of Property issued in this matter on June 2, 2011, is not valid, not supported by the evidence and I order it be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

I find that the tenant has succeeded in her Application and that she should recover the filing fee from the landlord. I direct that the tenant withhold \$50.00 from a future month's rent payment in satisfaction of this amount.

With regard to the tenant's application for monetary compensation, I order this hearing be adjourned and scheduled to reconvene in accordance with section 64 of the *Residential Tenancy Act* to the date specified in the enclosed Notice of Adjourned Hearing.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of Property is cancelled.

The portion of the tenant's application for a monetary order is adjourned.

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: July 11, 2011.

Residential Tenancy Branch