



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the landlord handed him the 2 Month Notice on April 13, 2012. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package handed to her agent on April 25, 2012. I am satisfied that the parties served these documents to one another and the tenant served his written evidence package (the only written evidence received) to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? Is the tenant entitled to recover his filing fee from the landlord?

Background and Evidence

The tenant moved into this rental unit on or about March 1, 2011. The original residential tenancy agreement was for a fixed term tenancy to last until April 28, 2013. A subsequent shorter term fixed term tenancy agreement was also signed on March 15, 2012 with a scheduled end to the tenancy set on May 31, 2012. Monthly rent is currently set at \$1,200.00, payable on the first of the month. The landlord continues to hold a \$300.00 security deposit for this tenancy.

The landlord purchased this property, comprising two side-by-side rental units, on April 27, 2012. The landlord currently lives in one side of the duplex, while the tenant lives in the other. They do not share any kitchen or bathroom facilities.

The landlord testified that on April 13, 2012, she issued the 2 Month Notice requiring the tenant to vacant his half of the duplex on June 30, 2012. She and her agent testified that their plan is to renovate the rental unit they are presently living in first, then rent it to someone else, and move into the tenant's current rental unit. They plan to undertake renovations in the tenant's rental unit, live in that unit for about a year, and then purchase another property.

The tenant maintained that he had a fixed term tenancy agreement that entitled him to live in the rental premises until April 28, 2013. The landlord testified that the tenant is currently residing on the premises on the basis of a short-term fixed term tenancy agreement, initialled by him, that is to expire on May 31, 2012. The legal effect of the conflicting tenancy agreements and the landlord's 2 Month Notice were unclear to all concerned.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues in dispute arising out of this tenancy under the following terms:

1. Both parties agreed that the landlord will cancel the 2 Month Notice issued on April 13, 2012, with the effect that this tenancy continues.
2. Both parties agreed that as of June 1, 2012, the tenancy continues as a periodic tenancy with the monthly rent set at \$1,300.00, payable in advance on the first of each month.
3. The tenant agreed to pay an additional \$350.00 towards the security deposit for this tenancy which is now set at \$650.00.
4. The tenant agreed to allow the landlord reasonable access to the rental unit for the purposes of the landlord's proposed renovations.
5. The landlord agreed to provide the tenant with at least 24 hours written notice to undertake any of the renovation work she commences.
6. Both parties agreed that the above-noted terms constitute a final and binding resolution of all issues in dispute arising out of this tenancy at this time.

Conclusion

The 2 Month Notice to End Tenancy is set aside and the tenancy will continue as per the above terms. The tenant must bear the cost of filing this application.

To give effect to the settlement agreement reached between the parties, I order that the existing residential tenancy agreement(s) are cancelled and are substituted by a periodic tenancy agreement in which the tenant pays a monthly rent of \$1,300.00, payable in advance on the first of each month. Once the tenant pays the additional \$350.00 towards the security deposit, I direct that the retained portion of the total security deposit held by the landlord is set at \$650.00.

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 14, 2012

Residential Tenancy Branch