



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction

This hearing concerns the tenant's application for cancellation of a 2 month notice to end tenancy for landlord's use of property / and recovery of the filing fee. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The tenant rents the main level of a house, while other renters reside in the basement. Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began on April 5, 2011. Monthly rent of \$1,400.00 is due and payable on the 5th day of each month, and a security deposit of \$700.00 was collected.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated March 31, 2012. The tenant claims she found the notice in the mailbox on April 10, 2012. Her application to dispute the notice was filed on April 19, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is June 1, 2012; the reason shown for its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord was represented at the hearing by her daughter, but the landlord's son is the landlord's main contact person for the tenant. The landlord's son was not present at the hearing. There is no conclusive information before me in relation to who served the notice or when it was actually served.

Near the start of the hearing the landlord's daughter claimed that the landlord's intention was to move into the unit with her (the daughter) and the landlord's son. However, as the hearing progressed the daughter acknowledged that the real reason for wanting to end the tenancy was related to difficulties allegedly encountered in obtaining payment from the tenant for utilities. The tenant testified that utilities are not included in the rent and that they are in the landlord's name. She also testified that visits by the landlord's son to the unit to collect the mail (including utility bills), as well as the rent, are irregular. This, the tenant claimed, is a contributing factor to the late payment of utilities.

Analysis

Based on the documentary evidence and testimony, I find on a balance of probabilities that the tenant filed her application to dispute the notice within the 15 day period available to her for doing same following service. I further find that the reasons identified for issuance of the notice are not the real reasons for wanting to end the tenancy. The notice is therefore set aside and the tenancy continues uninterrupted.

As the tenant has succeeded in her application to have the notice set aside, I find that she is entitled to recovery of the filing fee. In this regard I therefore order that the tenant may withhold \$50.00 from the next regular payment of monthly rent.

Conclusion

The landlord's 2 month notice to end tenancy is hereby set aside. The tenancy continues in full force and effect.

The tenant may withhold \$50.00 from the next regular payment of monthly rent in order to recover the filing fee.

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 08, 2012.

Residential Tenancy Branch