



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing was held in response to the tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, present affirmed oral testimony evidence and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord submitted late evidence, which was not given to the tenant. This evidence was not considered; the landlord was at liberty to provide oral testimony.

Issue(s) to be Decided

Should the 2 Month Notice to end Tenancy for Landlord's Use of the Property issued in May, be cancelled?

Has an illegal rent increase been imposed?

Background and Evidence

This tenancy commenced in mid-July 2010; rent was \$700.00 per month. There is no signed tenancy agreement.

In April, 2012, the landlord requested additional rent in the sum of \$100.00 per month. The parties agreed that in June, 2012 only, the tenant paid \$800.00; the landlord has a cheque for July rent owed, in the sum of \$700.00.

The tenant lives in a unit at the back of a house. There is a 2nd unit at the front of the home, and there is one mail box at the front of the house. The tenant has never used the house mail box as for a number of years he has had a postal box, elsewhere. He

did check the house mail box on June 2, 2012, as a family member had used the address and was expecting some mail.

On June 2, 2012, the tenant found the 1 Month Notice in the mail box. The tenant applied to dispute the Notice on June 18, 2012; the Monday following the 15th day after receipt of the Notice.

The landlord and the tenant agree that a 2 Month Notice to End Tenancy for Landlord's Use of the Property was given to the tenant; the Notice did not provide a full issue date; only "May."

The reason indicated on the Notice was:

- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.

The landlord stated that they have a family trust that shares ownership of the home. The landlord stated that the trust is the equivalent to a corporation. The landlord's brother wishes to reside in the home.

During the hearing the tenant provided the landlord with his postal box address, which may be used for service.

Analysis

When a tenant applies to cancel a Notice to end tenancy the landlord has the burden of proving the reasons on the Notice.

The Notice was flawed, as it did not contain a full issue date, as required by section 52 of the Act; however, the tenant understood he needed to dispute the Notice and did so within 15 days of receiving the Notice.

The landlord provided no evidence that a family corporation owns the rental unit. In the absence of any documentation that supported the submission that a family trust is the equivalent of a corporation and, in the absence of any evidence of the trust, I determined that the Notice in dispute was of no force or effect.

The tenancy shall continue until it is ended as provided by the Act.

In relation to the rent increase, I find that rent is \$700.00 per month, due on the first day of each month. Pursuant to section 65 of the Act, I find that the tenant is entitled to compensation in the sum of \$100.00 for the rent overpayment made in June, 2012. The tenant may deduct \$100.00 from rent owed for August, 2012.

The landlord is at liberty to issue a rent increase, in the approved form and amount, as provided by the Act.

As the tenant's application has merit I find he is entitled to the \$50.00 filing fee which may be deducted from August, 2012, rent due.

Conclusion

I have determined that the landlord submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 49 of the Act.

The 2 Month Notice for Landlord's Use of the Property issued in May is cancelled and of no force and effect. The tenant will continue until it is ended as provided by the Act.

The tenant may deduct **\$150.00** from August, 2012 rent due, for the \$100.00 June, 2012, rent overpayment and the filing fee cost.

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 10, 2012.

Residential Tenancy Branch