



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 he was handed the 2 Month Notice by a representative of the landlords on March 30, 2013. One of the respondents, the landlords' agent (the agent), testified that the tenant handed a copy of the tenant's dispute resolution hearing package to the agent's office on April 9, 2013. I am satisfied that the parties served the above documents and their written evidence package to one another in accordance with the *Act*.

The agent requested the issuance of an Order of Possession if the tenant's application to set aside the 2 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy for an upper suite room in this rental building commenced in August 2005. Current monthly rent is set at \$415.20, payable in advance on the first of each month. The landlords continue to hold the tenant's \$275.00 security deposit paid on or about August 1, 2005.

The landlords' 2 Month Notice seeking an end to this tenancy by June 1, 2013 was for the following reason:

- *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...*

At the hearing, the agent testified that the landlord needed the rental unit for the landlord and the landlord's daughter because the landlord is planning to sell the landlord's existing residence and move to the tenant's rental property. The agent said that the landlord would only move to the rental property after extensive renovations were completed on this rental property. The agent noted that the tenant is currently the only tenant remaining in this rental property.

The tenant entered oral and written evidence that the landlord has listed the rental property for sale, thus contradicting the landlords' stated purpose for issuing the 2 Month Notice.

At the hearing, the agent testified that the landlord did list the rental property for sale in March 2013, before the landlords issued the 2 Month Notice. The agent asserted that the landlord is not seriously attempting to sell this property, but is using the listing to attract interest for other real estate holdings. However, the agent confirmed that the rental property remains listed for sale. The agent said this listing could be discontinued very quickly if that were necessary in order to obtain an Order of Possession.

Analysis

The basis for the landlords' request for an end to this tenancy rests on section 49(3) of the Act which reads as follows:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit...

In reaching my decision, in this matter, I rely heavily on the agent's sworn testimony confirming that the rental property was listed for sale at the time of the issuance of the 2 Month Notice and remains listed for sale. I agree with the tenant that there is evidence that the reason identified on the 2 Month Notice is not a genuine reason for ending this tenancy for landlord's use of the property. I do not find that the landlords have demonstrated good faith in asserting that the landlord requires intends to occupy the tenant's rental unit when the landlord is simultaneously listing this rental property for

sale. For these reasons, I allow the tenant's application to cancel the 2 Month Notice issued on March 30, 2013, with the effect that this tenancy continues.

As the tenant has been successful in this application, I allow him to recover his \$50.00 filing fee from the landlords.

Conclusion

The tenant's application to set aside the landlords' 2 Month Notice is allowed. This tenancy continues.

Since the tenant's application was not dismissed, there is no need to consider the agent's oral request for an Order of Possession.

I allow the tenant's application to recover his \$50.00 filing fee from the landlords. To implement this part of my decision, I order the tenant to withhold \$50.00 from his next scheduled monthly rent payment. This reduces the tenant's next monthly rent payment from \$415.20 to \$365.20.

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 06, 2013

Residential Tenancy Branch

