



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC OLC ERP RP PSF LAT RR

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”), for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make regular repairs to the unit, site or property, to provide services or facilities required by law, to authorize the tenant to change the locks to the rental unit, and to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant, an advocate for the tenant, the landlord, and the landlord’s daughter who assisted her father with translation, attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The landlord confirmed that he received the documentary evidence from the tenant and had the opportunity to review the tenant’s evidence. The landlord confirmed that that he did not serve the tenant with his documentary evidence. Furthermore, the landlord’s document evidence was served on the Residential Tenancy Branch late and not in accordance with the Rules of Procedure. As a result, the landlord’s documentary evidence was excluded from the hearing as it was not served in accordance with the Rules of Procedure.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 2 Month Notice. I find that not all the claims on the tenant’s Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the

tenant's request to cancel the 2 Month Notice at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

Issue to be Decided

- Should the two month notice to end tenancy for landlord's use of property be cancelled?

Background and Evidence

The parties agreed that a periodic, month to month tenancy agreement began on April 1, 2010. The parties confirmed that the tenant paid a security deposit of \$400.00 at the start of the tenancy. The parties agreed that monthly rent was initially \$850.00 per month and due on the first day of each month, although the parties disputed the amount of monthly rent currently.

The parties agreed that the landlord served the tenant with a 2 Month Notice dated April 29, 2014, on the tenant on April 29, 2014. The tenant testified that she disputed the 2 Month Notice on May 13, 2014, when she amended her Application. The effective vacancy date of the 2 Month Notice is listed as June 30, 2014. The parties agreed that although the 2 Month Notice submitted in evidence by the tenant looks like it says "April 28" it is actually dated April 29, 2014.

The 2 Month Notice states the cause as "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 tenant indicates in her application that the landlord has "no qualifying relatives" and disputed the 2 Month Notice as a result.

The landlord testified that his adopted son, "S" will be moving into the rental unit. The tenant stated that based on previous conversations with the landlord, the landlord does not have an adopted son, and does not believe "S" is related to the landlord. The landlord was asked what year he adopted "S", to which the landlord replied "I think it was in 2004". The landlord confirmed that he did not submit any documentary evidence to support that "S" was his adopted son or otherwise related to the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The 2 Month Notice dated April 29, 2014 was received by the tenant on the same date, April 29, 2014. The 2 Month Notice has an effective vacancy date of June 30, 2014. The tenant disputed the 2 Month Notice on May 13, 2014 which is within the fifteen day timeline provided for under section 49 of the *Act* to dispute a 2 Month Notice. When a tenant disputes a 2 Month Notice, the onus of proof reverts to the landlord to prove that

the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. The landlord confirmed that he did not have any documentary evidence, witnesses or other evidence to support that "S" was his adopted son. The tenant disputed that "S" was related to the landlord based on previous conversations with the landlord. The landlord was asked what year he adopted "S", to which the landlord replied "I think it was in 2004".

Based on the above, I find the landlord provided insufficient evidence to prove that "S" is his adopted son and will be occupying the rental unit. I base my decision on the fact that the landlord was unable to specifically recall the date he allegedly adopted "S" by stating "I think" when giving the year of 2004. Furthermore, the landlord failed to submit any documentary evidence or provide witnesses to support that "S" was his adopted son and would be occupying the rental unit. I also note that "S" was not called as a witness and did not provide testimony during the hearing. As a result, **I cancel** the 2 Month Notice dated April 29, 2014 due to insufficient evidence.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The 2 Month Notice issued by the landlord and dated April 29, 2014 is cancelled, due to insufficient evidence.

The tenancy has been ordered to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: June 19, 2014

Residential Tenancy Branch

