



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, to call witnesses and to cross-examine one another. The landlord who attended this hearing (the landlord) confirmed that both landlords received the tenants' Notice of Hearing Package. The landlord also confirmed receipt of the tenants' submitted documentary evidence. The landlords did not submit any documentary evidence.

Both parties confirmed that the landlords served the tenants with the 2 Month Notice dated July 19, 2015 which shows an effective end of tenancy date of September 30, 2015. The 2 Month Notice also displays one reason selected for the issuance of the Notice.

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

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 Month Notice?

Background and Evidence

Both parties agreed that this tenancy is a fixed term tenancy which began on July 1, 2015 for 1 year ending on July 1, 2016 with a monthly rent of \$1,200.00 payable on the 1st of each month.

The tenant provided a copy of the text from section 49 of the Residential Tenancy Act which states,

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

The tenant stated that this is a fixed term tenancy ending on July 1, 2016 and that the landlord may not issue the 2 Month Notice as it conflicts with section 49 (2) (c) of the Act.

The landlord stated at the outset that their interpretation of section 49 of the Act was in error and that at the time of issuing the notice they were under the impression that it was allowed in the circumstances. The landlord stated that it was their intention to move back into the property themselves. The landlord stated during the hearing that she is now aware that the 2 Month Notice should not have been issued because the tenancy ends on July 1, 2016.

Analysis

Subsection 49(2) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The landlord provided undisputed affirmed testimony that it was their intention to occupy the property however the landlord did not meet the criteria in section 49 (2) (c) in that the effective end of the tenancy date on the issued 2 Month Notice of September 30, 2015 is earlier than the end date of the fixed term tenancy of July 1, 2016. The tenants' application to cancel the 2 Month Notice dated July 19, 2015 is granted. The Notice is set aside and the tenancy shall continue.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application. As the tenancy continues, I order that the tenants upon receipt of this decision may withhold \$50.00 from their next month's rent in satisfaction of their claim.

Conclusion

The tenants' application to cancel the 2 Month Notice dated July 19, 2015 is granted and the tenancy shall continue. The tenants may withhold one-time \$50.00 from the next month's rent.

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: August 28, 2015

Residential Tenancy Branch

