



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 an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenants to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) dated November 30, 2015 and to recover the cost of the filing fee.

Tenant M.G. (the “tenant”) and the landlord attended the teleconference 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.

The landlord confirmed that he did not submit any documentary evidence in response to the tenant’s application.

Preliminary and Procedural Matter

At the outset of the hearing, the parties agreed that landlord T.D. should be removed from the tenants’ application and by consent of the parties, and in accordance with section 64(3) of the *Act* the tenants’ application was amended to leave only the name of landlord B.D. as the single respondent.

Issues to be Decided

- Should the 2 Month Notice dated November 30, 2015 be cancelled?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A month to month tenancy began on April 1, 2008. Currently, monthly rent is \$1,130.00 per month and is due on the first day of each month. A copy of the tenancy agreement was submitted in evidence.

A copy of the 2 Month Notice dated November 30, 2015 was submitted in evidence. It lists as the reason the following:

“The landlord has all necessary permits and approvals required by law to demolish or repair the rental unit in a manner that requires the rental unit to be vacant.”

The effective vacancy date listed on the 2 Month Notice is February 1, 2016 and the tenant applied to dispute the 2 Month Notice on December 11, 2015 which is within the 15 day period permitted under section 49 of the *Act*.

The landlord testified that while he confirmed with the city that no permits were required he did not provide any supporting documents such as a letter from the city confirming that information.

Analysis

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

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 agent confirmed that he did not have any supporting documentary evidence to support that the rental unit had to be vacant to perform the required repairs referred to in the 2 Month Notice. Furthermore, the landlord failed to submit a copy of a letter from the city supporting that no permits were required to repair the rental unit in the manner indicated on the 2 Month Notice.

Based on the above, I find the landlord provided insufficient evidence to support the reason listed on the 2 Month Notice. Therefore, **I cancel** the 2 Month Notice dated November 30, 2015, due to insufficient evidence.

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

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$50.00**. **I authorize** the tenant to deduct \$50.00 on a one time basis from the monthly rent for a future month in full satisfaction of the recovery of the \$50.00 filing fee.

Conclusion

The 2 Month Notice issued by the landlord dated November 30, 2015 is cancelled due to insufficient evidence.

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

The tenant has also been authorized to deduct \$50.00 from a future month's rent on a one-time basis in full satisfaction of the recovery of the cost of the filing fee.

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: February 9, 2016

Residential Tenancy Branch

