



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX TOP PERFORMERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the tenant to cancel a two month notice to end tenancy for landlord’s use of property, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, the tenant’s daughter, an agent for the landlord (the “agent”), the landlord, and an advocate for the landlord attended the teleconference hearing. The hearing process was explained to the parties, 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. There were no witnesses presented during the hearing by either party.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

I dismiss the tenant’s request for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 59 of the *Act* due to insufficient details in the tenant’s Application for Dispute Resolution.

Issues to be Decided

- Should the two month notice to end tenancy for landlord’s use of property be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on February 29, 2016. Monthly rent is \$750.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy.

The parties agreed that the landlord served the tenant with a 2 Month Notice to End a Tenancy for Landlord's Use of Property (the "2 Month Notice") dated March 16, 2016, via personal service on the tenant on March 16, 2016. The tenant disputed the 2 Month Notice on March 30, 2016 which is within the 15 day timeline provided for under section 49 of the *Act*. The effective vacancy date of the 2 Month Notice is May 31, 2016.

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 raised the issue of good faith in relation to the 2 Month Notice by presenting two different rental ads for the rental unit by the landlord; one of which is dated March 16, 2016 and indicates that the ad was posted "about 23 hours ago" and the other of which is dated March 21, 2016 and marked as "published" on March 21, 2016. The tenant used a popular online translation free service to provide an English version of the rental ad dated March 21, 2016 that was translated from Chinese to English.

While the landlord confirmed that the phone number on both rental ads did belong to the landlord, the landlord submitted a document in Chinese that the landlord claims supports that on March 16, 2016 the landlord cancelled one of the rental ads. The landlord did not submit in evidence documents to support that both ads were cancelled and the document provided by the landlord is in Chinese and could not be read by either the tenant or the undersigned as a result. The landlord advocate stated that he assumed the Residential Tenancy Branch would have the documentary evidence translated for the landlord. The landlord was advised that it is the responsibility of each party to provide their evidence they intend to rely on during the hearing, including any translated documents so that all parties can read the documents as Residential Tenancy Branch hearings are conducted in English. The landlord advocate stated that the landlord is not responsible for the rental ads still being on the rental ad websites after they were cancelled. The tenant disputed that the ads were cancelled as she could not read the evidence presented in Chinese.

The landlord presented their contract for listing their home for sale in support that they would be moving back into the rental home. The tenant stated that the upstairs is vacant and that the tenant should be able to remain in the rental unit if the landlords wish to

move back into the rental home. The landlord confirmed that the upstairs of the rental home is vacant. The landlord stated that their daughter plans to live in the rental unit in the basement; however, the daughter was not available as a witness and there was no documentary evidence submitted to support the landlord's testimony which was disputed by the tenant.

Analysis

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

The 2 Month Notice dated March 16, 2016 was served personally on the same date and has an effective vacancy date of May 31, 2016. The tenant disputed the 2 Month Notice on March 30, 2016 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 and the tenancy will continue.

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. In addition, when a tenant has filed to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

Based on the above, I find the landlord has failed to prove that the 2 Month Notice was issued in good faith as the tenant's evidence supports that the landlord had a rental ad posted in Chinese, which tenant had translated into English and submitted in evidence, that reads "Published: 2016/03/21" which is March 21, 2016, and is five days after the landlord served the tenant with a 2 Month Notice. There is no dispute that the contact information is the landlord's contact information on the rental ad. Furthermore, I find the landlord's evidence to be lacking as it was provided in Chinese and without a translated version in English as dispute resolution hearings are conducted in English. In addition, I find it unlikely that a website would have a rental ad marked as "published" five days after it was allegedly cancelled. Given the above, I am unable to find that the 2 Month Notice was issued in good faith. Therefore, **I cancel** the 2 Month Notice dated March 16, 2016.

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

As the tenant's application has merit, **I grant** the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**. **I authorize** the tenant a one-time rent reduction for a future month's rent in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenant's application is successful.

The 2 Month Notice issued by the landlord dated March 16, 2016 is cancelled. The tenancy has been ordered to continue until ended in accordance with the *Act*.

The tenant has been granted a one-time rent reduction for a future month's rent in the amount of \$100.00 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: May 4, 2016

Residential Tenancy Branch