



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 a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing.

Issues

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 & Evidence

The rental unit is a detached 3 bedroom rancher house. The tenant entered into a written tenancy agreement with a previous landlord and began his tenancy in December 2010. The current landlords purchased the property in April 2016. The current monthly rent of \$1300.00 is payable on the 1st day of each month. The tenant paid a security deposit of \$650.00 at the start of the tenancy.

The landlord served the tenant with the 2 Month Notice dated May 10, 2016 citing the following reason on page 2 of the Notice:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant*

At the outset of the hearing, the landlord testified that they intend to move into the rental unit.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith as the landlord first attempted to increase the rent by \$400.00 per month.

Analysis

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

The landlord testified that they intend to move into the rental unit. Page 2 of the 2 Month Notice to End Tenancy requires a landlord to put an "x" in all boxes that apply. The landlord did not check off the box that the rental unit will be occupied by the landlord. By omitting this from the Notice, the landlord has hindered the tenant's ability to argue the full grounds for the Notice.

Accordingly, the 2 Month Notice to End Tenancy dated May 10, 2016, is hereby cancelled and of no force or effect. The landlord is at liberty to issue a new 2 Month Notice to End Tenancy by citing the correct grounds.

Is the tenant entitled to recover the filing fee for this application from the landlord?

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenant may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated May 10, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: June 23, 2016

Residential Tenancy Branch