



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to its cancellation?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 1, 2012. Rent of \$1,030.00 is payable on the first day of each month. In a Decision dated June 6, 2016 a notice to end tenancy for landlord’s use issued May 1, 2016 (the 1st Notice) was cancelled.

Evidence of the Landlord’s Agent: On June 1, 2015 the Landlord served the Tenant with a two month notice to end tenancy for landlord’s use (the “2nd Notice”). The Landlord confirms that this notice contains two reasons: renovations requiring a vacant unit and that a family member will move into the unit. The Landlord states that the 2nd

Notice was cancelled by the Landlord and another notice to end tenancy for landlord's use was issued on June 9, 2016 (the "3rd Notice"). The 3rd Notice contains one reason: a family member will move into the unit. The Landlord states that the 2nd Notice was not valid. The Landlord states that the plans are not to renovate as this requires permits and that such renovations may take place in the future. The Landlord states that the owner's daughter will move into the unit that is in a building that contains an additional 3 units on the top floor. The Landlord states that all of the units are connected by doors and it is the intention of the daughter to occupy all 4 units. Of the other 3 units, one has been vacant since January 2015, and the other two will be vacant at the end of their fixed term leases, one of which ends December 31, 2016. The Landlord states that the owner of the building will also occupy those units with the daughter. The Landlord states that the owner is currently residing out of country and will return at the end of this year. The Landlord states that before leaving the country the owner lived in a house nearby that was sold in January 2016. The Landlord does not know when the owners left the country.

Evidence of the Landlord's Witness: The Witness, the daughter of the Landlord/Owner states that her and her husband will move into the unit and will occupy the entire top floor as they plan on having a baby sometime next year. The Witness currently has no children. The Witness states that she returned from out of country having finished studies on June 10, 2016. The Witness states that she rented a house from friends and she thinks that she moved into this house in June 2016. The Witness states that she pays around \$1,000.00 for rent. After being questioned about why she would not know the exact amount of rent the Witness states that she pays exactly \$1,000.00. The Witness states that her parents, the Landlord/Owners left the country at the end of June 2016 and will be returning in September 2016. The Witness states that her parent will live with her friends at the friends' house if she moves out of that house.

The Tenant states that they do not believe that the owner sold the nearby house as they used that house address on the Notices issued in June 2016. The Landlord's Agent states that the address was used as the Landlord had no other address to use. The

Tenant states that they are confused by the Landlord and Witness evidence as it contains many contradictions. The Tenant states that at the end of April 2016 the Landlord asked for a large rental increase and that when the Tenants refused the Landlord immediately served the 1st Notice that listed renovations as the reason for ending the tenancy. It is noted that 1st Notice was cancelled in a Decision dated June 6, 2016 as the Landlord gave conflicting reasons for this Notice at the hearing, both for renovations requiring a vacant unit and for a family member to move in.

Analysis

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. As the same dual and conflicting reasons contained in the 2nd Notice were dealt with in the June 6, 2016 Decision, I find that res judicata applies to the 2nd Notice which is therefore invalid and cancelled.

I find the Tenant's evidence of the Landlord's request for a substantial rent increase just prior to the issuance of three ensuing notices to end tenancy for landlord's use to be compelling and I note that this evidence was not disputed. I find the Witness evidence to be vague in relation to her current residency and yet precise about her return to Canada. Given this finding and the conflicting evidence between the Agent and the Witness I cannot find their evidence to be credible. Overall and considering the different and conflicting reasons provided on the previous and consecutively issued notices, I find the Tenant has provided sufficient evidence to cast doubt on the good faith intention of the Landlord. I therefore find that the Tenant has substantiated on a balance of probabilities that the 3rd Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and I order the Tenant to deduct this amount from future rent payable.

Conclusion

Both notices to end tenancy are cancelled and of no effect.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 20, 2016

Residential Tenancy Branch