



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; his legal counsel; and the landlord's agent.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The parties agreed the tenancy began in December 2013 as a month to month tenancy for a current monthly rent of \$500.00 due on the 1st of each month.

The tenant has submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on June 18, 2016 with an effective vacancy date of August 18, 2016 citing a family corporation owns the rental unit and it will be occupied by an individual, who owns, or whose close family members own, all the voting shares.

The landlord testified that originally she was going to have her mother live in the rental unit but then their plans have changed and the intent is for her father in law to live in the unit. The landlord confirmed that they do not have a family corporation.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. A family corporation is defined in this section as a corporation in which all the voting shares are owned by one individual or one individual plus one or more of that individual's brother, sister or close family members.

As the landlord has confirmed that they do not have a family corporation, I find the landlords cannot end the tenancy because a close family member of a family corporation intends to live in the rental unit.

Conclusion

Based on the above, I grant the tenant's Application and cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on June 18, 2016. I order that the tenancy will remain in full force and effect and the landlord is not entitled to an order of possession.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment pursuant to Section 72(2)(a).

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 11, 2016

Residential Tenancy Branch