



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel 2 Month Notice to End Tenancy for Landlord's Use of Property, (the "Notice") issued on June 28, 2016 and for a monetary order for money owed or compensation under the Act.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on July 12, 2016 a Canada post tracking number was provided as evidence of service. The tenant stated that the landlord has two residences, one is the basement suite at the subject property and the other residence they do not know the mailing address. The tenant stated that they sent the documents to the service address the landlord used in the notice to end tenancy. The tenant stated that although the landlord was at the premises after the notice was mailed, they did not claim the registered mail package.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. Refusal or neglect to pick up the package is not grounds for review. I find that the landlord has been duly served in accordance with the Act.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently

related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's application is dismissed, with leave to re-apply.

The tenant appeared gave testimony and were provided the opportunity to present their evidence orally and in written, documentary form, and make submissions at the hearing.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 31, 2016.

The reason stated in the Notice was that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, child; or the parent or child of that individual spouse)

The tenant deny the reason stated in the Notice as the property is for sale and the landlord already lives in the basement suite.

Analysis

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

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

This matter was set for hearing by telephone conference call at 11:00 A.M. on August 24, 2016. The line remained open while the phone system was monitored for 15 minutes and the only participant who called into the hearing during this time was the tenant.

Since the landlord did not attend the hearing by 11:15 A.M to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reason stated. I find that the landlord has failed to show the reasons stated in the Notice.

Therefore, I grant the tenant's application to cancel the Notice issued on June 28, 2016, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

As the tenant was successful with their application, the tenant is entitled to recover the filing fee from the landlord. Therefore, I authorize the tenant a onetime rent deduct of \$100.00 from September 2016, rent payable to the landlord to satisfy this award.

Conclusion

The tenant's application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

The tenants is authorized a onetime rent reduction of \$100.00 to recover the cost of the filing fee from the landlord.

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 25, 2016

Residential Tenancy Branch