



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on July 19, 2016 (the "Application").

Pursuant to the *Residential Tenancy Act* (the "Act"), the Tenant applied for an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 5, 2016 (the "2 Month Notice").

The Tenant attended the hearing on her own behalf and was capably assisted by her legal advocate, E.R. The Landlord attended the hearing on her own behalf. Both parties provided their solemn affirmation.

On behalf of the Tenant, E.R. advised the hearing package, including the Notice of a Dispute Resolution Hearing, was served on the Tenant by registered mail, and that the subsequent evidence packages were served on the Landlord in person. The Landlord acknowledged receipt and raised no issue with respect to the service. The Landlord did not submit any documentary evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Background and Evidence

The parties confirmed the tenancy began in 2012. According to the Tenant rent is currently due in the amount of \$700.00 per month.

The Landlord provided oral testimony in support of the 2 Month Notice, which the Tenant's written submissions acknowledge was received on July 5, 2016. The Landlord advised she has been required by the city to evict the Tenant because the rental unit is not in compliance with local by-laws relating to secondary suites. She advised she may be subject to monetary penalties. The Landlord read from a letter she recently received from the city.

The Landlord also testified that she does have a permit for the main house, but not for the cottage in which the Tenant resides.

In response, and on behalf of the Tenant, E.R. acknowledged there is an issue regarding compliance with the local by-law that needs to be addressed. However, she submitted that the Landlord has not followed the correct procedure for ending the tenancy, and that the 2 Month Notice should be set aside.

In an email dated August 23, 2016, provided with the Tenant's documentary evidence, a senior municipal by-law enforcement officer advised E.R. that he would be "doing a report to council very soon asking them to not enforce the section of the by-law".

In accordance with the Landlord's oral testimony, an email from the city building department to E.R., dated August 26, 2016, states: "There have been no permits issued for [the] cottage."

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49 of the Act permits a landlord to end a tenancy in the circumstances described therein. In this case, the Landlord sought to end the tenancy on the basis that "[t]he 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."

I find there is insufficient evidence before me to conclude the Landlord intends to demolish, renovate or repair the rental unit. Indeed, the Landlord's own testimony confirmed that the only permit she has obtained relates to the main house, not the cottage occupied by the Tenant. Further, the Landlord also testified as to her understanding she must evict the Tenant immediately due to non-compliance with local by-laws.

In light of the above, I find that the 2 Month Notice issued by the Landlord must be cancelled. The tenancy will continue unless otherwise ended in accordance with the *Act*.

Conclusion

The 2 Month Notice is cancelled.

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: September 09, 2016

Residential Tenancy Branch