



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 tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and landlord attended the hearing. At the outset of the hearing, the landlord confirmed that she had received the tenants' evidence. The landlord confirmed that she did not provide any documentary evidence for the hearing. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Service of 2 Month Notice

The landlord testified that on December 9, 2016 she emailed the 2 Month Notice to the tenants. Section 88 of the *Act* establishes that when a landlord serves a notice to end tenancy it must be served by leaving it directly with the tenant, by leaving a copy in a mailbox or mail slot, by attaching a copy to the door, by fax, by regular mail or registered mail. The tenants acknowledged receipt of the 2 Month Notice. Although the landlord did not serve the 2 Month Notice in accordance with the *Act*, I find pursuant to section 71 (2)(b) of the *Act*, that the application was sufficiently served.

Issue(s) to be Decided

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

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

The parties testified that this tenancy began on July 1, 2010 on a fixed term ending December 1, 2010 at which time it continued on a month-to-month basis. Rent in the amount of \$1,226.40 is payable on the first of each month. The tenants remitted \$600.00 for the security deposit and \$300.00 for the pet deposit at the start of the tenancy. The tenants continue to reside in the rental unit.

On December 9, 2016 the landlord issued the 2 Month Notice, indicating that the rental unit will be occupied by the landlord or the landlord's close family member. The notice indicates an effective move-out date of March 1, 2017. The landlord testified that she plans to house her dependent brother in the rental unit, but does not plan to collect rent.

It is the tenants position that the 2 Month Notice was issued in contravention of the *Act*. The tenants contend that the *Act* does not include brother as a close family member.

Analysis

The *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Under section 49 of the *Act*, a close family member is defined as the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. Based on the landlord's testimony that her intent is to move her brother into the rental unit, an individual that does not meet the definition of family member, I set aside the 2 Month Notice.

Conclusion

The 2 Month Notice is set aside. The 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: January 11, 2017

Residential Tenancy Branch

