



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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 49 of the *Act*.

The tenant and the landlord attended the hearing. Both were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant stated that she was served by way of Registered Mail with the landlord's 2 Month Notice on February 9, 2017.

The landlord confirmed receipt of the tenant's dispute resolution and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and evidence package.

Issue(s) to be Decided

Does the tenant have grounds to cancel a 2 Month Notice to End Tenancy? If not, should the landlord be issued an Order of Possession?

Background and Evidence

The landlord and the tenant testified that the tenancy for the rental unit began in January 2008. Rent of \$863.00 is due on the first of every month and a security deposit of \$375.00 continues to be held by the landlord.

The tenant stated that she received the 2 Month Notice indicating that the landlord plans to end the tenancy based on having all the necessary permits and approvals required by law to convert the rental unit to non-residential use. She explained that she immediately contacted the City of Burnaby about this and was advised by the City that

there were currently no permits issued for this building, nor were any applications before the City concerning a re-zoning of the building.

The landlord explained that he issued the 2 Month Notice in error and inadvertently marked the wrong box on the 2 Month Notice. The landlord accepted the tenant's submissions that he in fact was not planning on converting the rental unit.

Analysis – 2 Month Notice

The landlord testified that he issued the 2 Month Notice in error and stated he was not planning on converting the rental unit.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the 2 Month Notice entered into evidence, the tenant's testimony that no permits had been issued for the building and the landlord's sworn testimony that he did not intend to convert the rental unit and issued the 2 Month Notice in error. I find that the landlord does not have ground have grounds to issue the 2 Month Notice and I grant the tenant's application to cancel it.

The tenant was successful in cancelling the landlord's notice to end tenancy.

As the tenant was successful in cancelling the landlord's notice, she may pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the landlord. In lieu of a Monetary Order, the tenant may withhold \$100.00 from a future rent payment.

Conclusion

The tenant was successful in cancelling the landlord's notice to end tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment.

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: March 16, 2017

Residential Tenancy Branch