



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated March 2, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for landlord's use of property;
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf, as did the Landlord. Both parties provided a solemn affirmation at the beginning of the hearing.

The Tenant confirmed that the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on March 7, 2017. The Landlord acknowledged receipt. I find the Tenant's Application package was duly served on the Landlord in accordance with the *Act*. The Landlord confirmed he did not submit any documentary or digital evidence in response to the Tenant's Application.

No issues were raised with respect to service or receipt of the above documents. The parties were provided an 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.

Issues

1. Is the Tenant entitled to an order cancelling a notice to end tenancy for landlord's use of property?
2. Is the Tenant entitled to an order that the Landlord comply with the Act, Regulation or a tenancy agreement?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on or about January 1, 2015. Currently, rent in the amount of \$530.00 per month is due on the first day of each month. The Tenant did not pay a security deposit or a pet damage deposit.

According to the Landlord, the rental property was purchased as part of the purchase of a pharmacy business, and is used primarily to house employees of the business. He advised that the rental property is held in a family trust.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 28, 2017 (the "2 Month Notice"). The Tenant acknowledged receipt of the 2 Month Notice on March 1, 2017. The Landlord testified he issued the 2 Month Notice because he intends to move into the rental property. He indicated he has previously had to sleep in office space when in town, which is no longer suitable. The Landlord also testified that his father will also live in the rental property.

As indicated on the 2 Month Notice, the Landlord sought to end the tenancy on the following basis:

The Landlord is a family corporation and 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.

[Reproduced as written.]

The Tenant submitted that the Landlord does not intend to use the rental unit for the stated purpose, testifying that the Landlord is not in town frequently enough to justify ending the tenancy.

In addition, the Tenant sought an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement. She testified that other occupants of the rental property – the Landlord’s employees – have over the years accessed laundry facilities through her rental unit. She indicated that this has been happening with increasing frequency. Although this has been the arrangement since the tenancy began, she no longer wishes to allow access through her rental unit.

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 that is a “family corporation” to end a tenancy on the bases provided therein. Section 49(1) of the *Act* defines a “family corporation” as follows:

“family corporation” means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual’s brother, sister or close family members

[Reproduced as written.]

I find there is insufficient evidence before me to conclude the Landlord is a family corporation as defined in the *Act*. Therefore, the Landlord had no standing to issue the 2 Month Notice on the basis indicated. I find that the 2 Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

In addition, the Tenant sought an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement. Section 5 of the *Act* confirms that landlords and tenants may not avoid or contract out of the *Act* or the regulations, and that any attempt to avoid or contract out of the *Act* or the regulations is of no effect.

Further, section 13 of the *Act* confirms that a landlord must include the standard terms in each tenancy agreement. One of these terms is found at section 11(1) of the Schedule to the Regulations, which states:

For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and the exclusive use of the rental unit.

[Reproduced as written.]

I find that the use of the Tenant's rental unit to permit the Landlord's employees to access laundry facilities is an unreasonable disturbance that does not provide the Tenant with exclusive use of the rental unit. Accordingly, I order the Landlord to comply with the above provisions and provide the Tenant with exclusive use of the rental unit.

Having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment.

Conclusion

I order that the 2 Month Notice is cancelled. The tenancy continues until otherwise ended in accordance with the *Act*.

I order the Landlord to comply with the *Act* and Regulations referenced above, provide the Tenant with exclusive use of the rental unit, and cease to allow other tenants or employees with access to laundry facilities in the Tenant's rental unit.

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: April 4, 2017

Residential Tenancy Branch