



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, OLC

Introduction

This hearing dealt with the tenant's 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;
- an order to have the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant testified and supplied documentary evidence that she served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on March 24, 2017, and deemed received under Section 90 of the Act five days later. The tenant had provided tracking information from Canada Post indicating the mail had not been claimed and that it was returned to her. Based on the above the hearing proceeded and completed in the absence of the landlord.

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 to be Decided

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

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following testimony. The tenancy began on or about December 1, 2013. Rent in the amount of \$1700.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$850.00. The tenant testified that the landlord served her with a Two Month Notice to End Tenancy for Landlords Use of Property on March 16, 2017 with an effective date of May 31,

2017 on the grounds the landlord wishes to move into this unit and wants the tenant to move out. The tenant testified that the landlord has often stated that the tenant isn't paying enough rent. The tenant testified that she questions whether the landlord is issuing this notice in good faith. The tenant testified that she doesn't think the landlord is going to move in and that they are attempting to end her tenancy so that they can rent out the unit at a much higher price.

Analysis

When a landlord issues a notice to end tenancy, they bear the responsibility of providing sufficient evidence to support the issuance of the notice. In the matter before me, the tenant has questioned the landlords' good faith in regards to issuing the notice. Residential Tenancy Policy Guideline 1 addresses the good faith issue as follows:

- *If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

The landlord has not participated in this hearing or submitted documentary evidence for consideration, accordingly, the landlord has not provided sufficient evidence to address the good faith issue and as a result, the notice to end tenancy is set aside. It is of no force or effect.

The tenant has been successful in her application. The tenant is entitled to the recovery of the filing fee.

Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property dated March 16, 2017 with an effective date of May 31, 2017 is cancelled; it is of no effect or force. The tenancy continues. The tenant is entitled to a one time rent reduction of \$100.00 from the rent due on June 1, 2017 in full satisfaction for the recovery of the \$100.00 filing fee.

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: May 01, 2017

Residential Tenancy Branch