



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, OLC, O, RP

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated May 4, 2017
- b. An order for repairs
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the two month Notice to End Tenancy was personally served on the Tenant on May 11, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenant was personally served on the landlord on May 24, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated May 4, 2017?
- b. Whether the tenant is entitled to a repair order?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on August 1, 2015 when the parties entered into a month to month tenancy. The tenancy agreement provided that the tenant(s) would pay rent of \$800 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$400 at the start of the tenancy.

The tenant gave the following testimony:

- In February the landlord attempted to increase the rent from \$800 to \$1000 per month. He told the landlord that rent increase was not permitted.
- On May 11, 2017 the landlord served a 2 month notice to End Tenancy on him. The landlord told him he needed the rental unit to house his cousin who had recently moved from India. He has an audio tape where the landlord told him this information which he submitted.
- He submits a cousin is not a close family member as defined by the Residential Tenancy Act.

The agent for the landlord testified as follows:

- They need the rental unit to house a cousin who recently moved from India.
- They are responsible financially for the cousin and the rental unit is close to public transportation which is necessary for him to find work.
- There is no room for the cousin to live upstairs.
- In addition, their grandfather suffers from a knee problem and he finds it difficult to move up and down stairs. It is intended that the grandfather will move downstairs.
- The tenant has 5 or 6 people living downstairs when it was agreed the unit was rent for 3 people only.
- She denied the landlord intended to increase the rent from \$800 to \$1000.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Analysis:

After carefully considering all of the evidence I determined the landlord failed to provide sufficient evidence to satisfy the requirements of section 49 of the Residential Tenancy Act. The Act requires that the unit is to be occupied by the landlord or the landlord's

spouse or a father, mother or child of the landlord or the landlord's spouse. A cousin is not a sufficiently close family member as defined by the Act.

Determination and Orders:

As a result I ordered that the 2 month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the tenant's application for repairs as the tenant failed to identify what repairs he was seeking in the Application for Dispute Resolution and failed to present sufficient evidence that repairs are needed. As the tenant has been successful in the application to cancel the Notice to End Tenancy I ordered that the landlord pay to the Tenant the sum of \$100 for the cost incurred by the Tenant to file this application such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: July 10, 2017

Residential Tenancy Branch