



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

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

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) and evidence sent by way of registered mail on September 13, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and evidence.

The tenant acknowledged receipt of the landlord's evidence, which was personally served to the tenant on October 07, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlords' evidence.

The landlord testified that they personally served a letter (Landlord's Letter) to the tenant on September 01, 2017, requesting the tenant to end this tenancy. The tenant confirmed receiving this letter. In accordance with section 88 of the *Act*, I find that tenant was duly served with the Landlord's Letter.

Issue(s) to be Decided

Should the Landlord's Letter requesting the tenant to end this tenancy be cancelled? If not, is the landlord entitled to an Order of Possession based on the Landlord's Letter?

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

Background and Evidence

The tenant gave written evidence that this tenancy began on September 13, 2014, with a current monthly rent of \$1,000.00, due on the first day of the month. The tenant testified that the landlord currently retains a security deposit in the amount of \$1,000.00.

A copy of the Landlord's Letter, requesting the tenant to move out of the rental unit by November 30, 2017, was submitted into evidence. In this letter the landlord stated that they are going to move into the rental unit.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for their own use if they intend, in good faith, to move in or have a close family member move into the rental unit. In such a case the landlord must provide the tenant with a notice to end tenancy that complies with Section 52.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,...and

(e) when given by a landlord, be in the approved form...

I find the Landlord's Letter, requesting the tenant to move out of the rental unit, is a hand written document created by the landlord and is not on the approved form. For this reason I find the Landlord's Letter does not comply with the provisions of section 52(e) of the *Act* and is not a valid notice to end tenancy.

For the above reason the Landlord's Letter is set aside and this tenancy will continue until ended in accordance with the *Act*.

As the tenant has been successful in this application, I allow them to recover their filing fee from the landlord.

Conclusion

The tenant is successful in their Application.

The Landlord's Letter is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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: November 03, 2017

Residential Tenancy Branch