



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MADISON VILLA ENT. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FFT OLC PSF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- to cancel a Month Notice to End Tenancy given for Landlord's Use of Property ("2 Month Notice") pursuant to section 49 of the *Act*;
- to have the landlord comply with order made under section 62 of the *Act*;
- to provide services required by law pursuant to section 65 of the *Act*; and
- a return of the filing fee from the landlord pursuant to section 72 of the *Act*.

The tenant and her advocate attended the hearing while the landlord did not. The tenant was given full opportunity to be heard, to present her sworn testimony and to make submissions and present evidence under oath.

The tenant stated that she was served with a 2 Month Notice on November 9, 2016. This notice sent to her by regular mail, is found pursuant to sections 88 & 90 of the *Act*, to have been served on November 13, 2017, five days after its posting.

On November 29, 2017, the tenant sent her copy of application for dispute along with her evidentiary package to the landlord by way of Canada Post Registered Mail. A copy of the Canada Post tracking number and receipt were provided to the hearing as part of the tenant's evidentiary package. Pursuant to sections 89 & 90 of the *Act*, the landlord is deemed to have been served with these documents on December 3, 2017, five days after their posting.

Issue(s) to be Decided

Can the tenant cancel the landlord's 2 Month Notice?

Should the landlord be directed to comply with the *Act*?

Should the landlord be directed to provide services as required by the law?

Is the tenant entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony provided to the hearing by the tenant explained that this tenancy began in September 2000. Rent began at \$800.00 per month, and has since risen to \$1,200.00 per month. A security deposit of \$400.00 paid at the outset of the tenancy continues to be held by the landlord.

At the hearing, the tenant said she was served with a 2 Month Notice to end tenancy. The reason cited by the landlord on the 2 Month Notice was, "the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property." On November 10, 2017 the tenant disputed this notice.

The landlord did not appear at the hearing, nor was any evidence submitted to the hearing by the evidence explaining why this notice was served on the tenant.

As part of her evidentiary package, the tenant submitted photos displaying a dilapidated rental building which had been subject to past issues of leaking pipes and holes in the hallway. In her application for dispute, the tenant said that she suspected that the landlord had issued the 2 Month Notice after she complained about issues with the building's maintenance.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property, a tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice within the required timelines, the landlord bears the burden to prove the grounds for the 2 Month Notice. The tenant received the notice to end tenancy on November 9, 2017 and filed to dispute this notice on November 10, 2017. The tenant has therefore applied within the fifteen day timeline mandated by the *Act*. The landlord did not attend the hearing I find the landlord has failed to satisfy the

burden of proof and I therefore allow the tenant's application to cancel the 2 Month Notice.

The tenant has also applied for orders directing the landlord to comply with the *Act*, and for an order directing the landlord to provide services or facilities required by the law. I find that some issues regarding the building's maintenance were raised by the tenant's evidentiary package were submitted to the hearing, but that insufficient evidence speaking to the tenant's specific concerns were raised. This portion of the tenant's application is dismissed with leave to reapply.

As the tenant was successful in her application, she may under section 72 of the *Act* recover the \$100.00 from the landlord. In lieu of a monetary award, I allow the tenant to withhold \$100.00 from a future rent payment on **one** occasion.

Conclusion

The tenant was successful in her application to cancel the landlord's 2 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant's application for an Order directing the landlord to comply with the *Act* and for orders directing the landlord to provide services as required by the law is dismissed with leave to reapply.

The tenant may withhold \$100.00 from a future rent payment on **one** occasion, in satisfaction for a return of the 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: December 15, 2017

Residential Tenancy Branch