



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenants' 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant DN confirmed he represented both named co-tenants. The landlord's spouse BS appeared as agent for the named landlord.

As both parties were in attendance I confirmed there were no issues with service of the landlord's 2 Month Notice, the tenant's application for dispute resolution or the evidence. The parties confirmed service of the materials. I find that the parties were duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the 2 month Notice pursuant to section 49? If not, should the landlord be issued an order of possession on the basis of the 2 Month Notice?

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

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in October, 2016. The monthly rent is \$1,500.00 payable on the first of each month. The rental unit is a detached building located on an orchard. The tenant is an employee of the landlord's business.

The landlord testified that in or about July, 2017 they were issued a bylaw contravention notice from the municipality and informed that the tenant was not permitted to reside in the rental unit unless he was an employee of the landlord. The parties said that they informed the municipal bylaw office that the tenant is an employee of the landlord and provided written evidence in support they were informed that the landlord must give notice to the tenant to end this tenancy. The parties expressed confusion with the municipality's position. The parties submitted into written evidence a copy of the Bylaw Offence Notice and Compliance Agreement.

The landlord issued the 2 Month Notice and provided as the reason for issuing the notice as, "The Landlord has all necessary permits and approvals by law to convert the rental unit to a non-residential use."

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 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, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the present circumstance the landlord issued the 2 Month Notice and indicated that the landlord has all necessary permits and approvals by law to convert the rental unit to a non-residential use. The landlord testified that she chose this reason as she was informed by the municipality that allowing the tenant to reside in the suite contravenes bylaws. The landlord said that the municipality has not provided her with clear instructions on what they require be done with the rental unit.

I find that there is insufficient evidence that the rental unit will be converted to a non-residential use. The landlord has said that she has been informed by the municipality that the tenant cannot be permitted to continue residing in the rental unit but has expressed confusion with their reasoning. The documentary evidence submitted into

written evidence provides little clarity as to the substance of the municipal bylaw the landlord is being told she is contravening. While I accept the undisputed testimony of the parties that they are attempting to comply with the demands of the municipality I find that the documentary evidence is insufficient to conclude that the landlord has the approvals required by law to convert the rental unit to a non-residential use. Consequently, I find that the tenant is successful in disputing the 2 Month Notice as the landlord has not established on a balance of probabilities that there is reason for ending this tenancy as set out in the Notice.

As the tenant's application was successful the tenant is entitled to recover the \$100.00 filing fee for this application. As the tenancy is continuing the tenant may recover the filing fee by withholding \$100.00 from an upcoming payment of monthly rent.

Conclusion

The tenant's application is successful. The 2 Month Notice is of no further force or effect.

The tenant is authorized to withhold \$100.00 from one future payment of monthly rent.

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: January 8, 2018

Residential Tenancy Branch