



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FF

Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested the following:

- an Order canceling a 1 Month Notice to End Tenancy for Cause issued on December 4, 2017 (the "Notice");
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations* and the residential tenancy agreement;
- an Order restricting the Landlord's right to enter the rental unit pursuant to section 29 and 70 of the *Residential Tenancy Act*; and,
- recovery of the filing fee.

The hearing was conducted by teleconference on January 22, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

Preliminary Matter

The Tenant named all of her children on the Application for Dispute Resolution. As only she and M.M. were noted on the tenancy agreement, I amend the Tenant's Application pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure* to include only the tenants names who were noted on the tenancy agreement.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Regulations* and the residential tenancy agreement?
3. Should the Landlord's right to enter the rental unit be restricted pursuant to section 29 and 70 of the *Residential Tenancy Act*?
4. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the first page of the Notice. The Tenant confirmed that she did not receive the second page, and therefore was not provided with written reasons why the Landlord wished to end the tenancy. She testified that he informed her that he wished to move his brother into the rental unit.

The Landlord confirmed that the reason he issued the Notice was because he wished to move his brother into the rental unit.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

The parties agreed that the Landlord wished to end the tenancy to facilitate his brother moving into the rental unit.

A landlord may end a tenancy provided it is done in accordance with the *Residential Tenancy Act*. Section 44 of the *Act* sets out the circumstances in which a tenancy may end.

Should a landlord wish to regain possession of a rental unit for their own use, and to permit a “close family member” (which is defined by section 49(1)) to reside in the rental unit, the landlord must comply with section 49 of the *Act*. In serving a 1 Month Notice pursuant to section 47, the Landlord issued the wrong notice to end tenancy.

In all cases, a landlord's notice to end tenancy must be done in accordance with section 52; which reads as follows:

Form and content of notice to end tenancy

52 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,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Section 52(d) stipulates that a landlord's notice to end tenancy must state the grounds for ending the tenancy. Further, section 52(e) requires landlords to issue a notice to end tenancy on the approved form, and in the case of a 1 Month Notice to End Tenancy issued pursuant to section 47, the approved form includes *two* pages. The second page of a 1 Month Notice provides the reasons for ending the tenancy as well as clear instructions to a tenant as to their responsibilities when receiving a notice.

In all the circumstances, I find the Landlord failed to comply with section 45, 52 and 47 and I therefore cancel the Notice.

Having been successful I award the Tenant recovery of the \$100.00 filing fee. She may, pursuant to section 72 of the *Act*, reduce her next month's rent by \$100.00 as recovery of this sum.

The Tenant failed to make submissions with respect to her claim for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations* and the residential tenancy agreement; similarly, she failed to make submissions with respect to her claim for an Order restricting the Landlord's right to enter the rental unit pursuant to section 29 and 70 of the *Residential Tenancy Act*. These claims are dismissed with leave to reapply.

Conclusion

The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant may reduce her next month's rent by \$100.00 as recovery of the filing fee.

The balance of the Tenant's claims are dismissed with leave to reapply.

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 23, 2018

Residential Tenancy Branch