



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

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 April 30, 2018
- b. 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 2 month Notice to End Tenancy was personally served on the Tenants on May 1, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenants was served on the landlord by mailing, by registered mail to where the landlord resides on May 8, 2018. With respect to each of the applicant's claims I find as follows:

Issues 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 April 30, 2018?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on April 1, 2009. There is no written tenancy agreement. The present rent is \$922.25 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$350 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on the following provision of section 49 of the Residential Tenancy Act which 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

The representative of the landlord testified the registered owner of the rental property is SK Ltd. which is a corporation. She further testified she is a shareholder and she wishes that her daughter move into the rental unit. The tenants dispute the Notice to End Tenancy.

Analysis:

I determined the landlord failed to establish sufficient cause to end the tenancy. The grounds set out in the Notice to End Tenancy provide that the landlord or the landlord's spouse or a close family member intends to move into the rental unit. This is impossible as the landlord is a corporation.

It is possible for the landlord to end the tenancy pursuant to a 2 month Notice to End Tenancy on the following ground:

- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares

However, the landlord would have to check this box in the Notice to End Tenancy. The landlord would also have to provide sufficient evidence to prove of the requirements of s. 49 of the Act including that it is a family corporation who owns the rental unit.

Conclusion:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy pursuant. As a result I ordered that the Notice to End Tenancy dated April 30, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

As the tenants have been successful with their application I order that the landlord pay to the Tenants the cost of the filing fee in the sum of \$100 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: June 27, 2018

Residential Tenancy Branch