



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes CNL CNR FFT MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on May 7, 2018.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings.

I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on December 1, 2014. Rent in the amount of \$800.00 was payable on the first of each month. The tenant paid a security deposit of \$400.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on July 15, 2018; however, as that date is earlier than the Act allows that date automatically corrects to July 31, 2018. The reason stated in the Notice was that:

- The rental unit will occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The landlord I-C testified that from the outset they have tried to comply with the Residential Tenancy Branch rules and regulations and have made mistakes along the way. I-C stated that they no longer want to be a landlord for the subject property as it has placed considerable stress on their family and has resulted in their family separating. I-C stated that they want the premises for their own use and they need the property to use for a cooling off period.

The landlord P-C testified that this has been a very difficult decision for their family.

The tenant testified that they do not dispute the landlord's marital problems as they have also had their own. The tenant stated that the landlord does not like them and that they have other rental property they could use. The tenant stated that the landlord only issued the Notice because they were unsuccessful at a previous hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that:

- The rental unit will occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The legal meaning of occupy is defined in the Black's Law Dictionary sixth edition.

*Occupy. To take or enter upon possession of; to hold possession of; **to hold or keep for use**; to possess; to tenant; to do business in; to take or hold possession.*

[Emphasis added]

Although I accept there was a previous hearing between the parties and the landlords were unsuccessful, I find the landlords have a right to end the tenancy if they no longer want to conduct their business of renting the property. That is a business decision which they are entitled to make, as the Act does not force a property owner to be landlord indefinitely.

Further, whether the intent is for one of the landlords to reside in the premises while they sort out their marital problems, or use the property for a cooling off period, that is not for me to consider as that is a personal choice of the landlords as long as they hold or keep the property for their own use as define above.

Additionally, although the tenant indicated the landlord does not like them, I find that does not prove the landlords have an ulterior motive, such as to increase the rent.

I find the Notice issued on May 7, 2018, has been proven by the landlords and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice issued on May 7, 2018.

The tenancy will end on July 31, 2018 in accordance with the Act. The tenant is entitled to withhold rent for July 2018, as that is their compensation for receiving the Notice.

Since I have dismissed the tenant's' application, I find that the landlords are entitled to an order of possession effective **July 31, 2018, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlords.

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Conclusion

The tenant's application to cancel the Notice, issued on May 7, 2018, is dismissed.

The landlords are granted an order of possession.

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 25, 2018

Residential Tenancy Branch