



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AJAY BOPARI ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL OLC

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on May 14, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 30, 2018 (the "Two Month Notice"); and
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement.

The Tenant attended the hearing in person. The Landlord was represented at the hearing by T.F., legal counsel. K.B. and T.P. also attended on behalf of the Landlord. The Tenant, K.B. and T.P. provided affirmed testimony.

The Tenant testified the Landlord was served with the Application package by registered mail on May 14, 2018. K.B. acknowledged receipt on behalf of the Landlord. The Landlord did not submit documentary evidence in response to the Application. No issues were raised during the hearing with respect to service or receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was directed. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Two Month Notice?
2. Is the Tenant entitled to an order that the Landlord comply with the Act, regulations, and/or the tenancy agreement?

Background and Evidence

The Tenant testified she has lived at the rental property for about 15 years. The parties confirmed that rent in the amount of \$1,500.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$400.00, which the Landlord holds.

The Two Month Notice was issued by the Landlord on the following basis:

The rental unit will be 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).

[Reproduced as written.]

On behalf of the Landlord, K.B. testified that his son, who is a student in Toronto, plans to live and work on the family farm. K.B. testified that this will be a help to him as he suffered a stroke last year. K.B. also testified that living on the same property together will help them resolve previous conflict.

The Tenant testified that the Landlord's son moved away because of difficulties in the relationship. She also testified to her belief that K.B. has mental health and alcohol abuse issues. The Tenant testified she has frequently been involved in the family's life and has provided assistance to the family over the years. In addition, the Tenant testified that K.B. discussed potential rent for the suite with her. In a hand-written note, dated April 2018, submitted with the Tenant's documentary evidence, the Tenant wrote:

[K.B.] called me told me he had to increase my rent as money is tight...I agree to pay July 1 2018 \$1700.00, he didn't like that said he could get \$2000.00...

[Reproduced as written.]

The Tenant also suggested K.B.'s son could live in the vacant 2-bedroom unit in the rental property, rather than require her to vacate the rental unit. In response, K.B. testified he does not want his son to live on the lower floor, and that it is not the Tenant's place to stipulate how he arranges his affairs. K.B. also suggested he wants his son to have a family and will require the space. The Tenant's suggestion she would be prepared to pay additional rent was rejected by K.B. during the hearing.

The Tenant also sought an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement. She stated the Landlord drives his vehicle on the front lawn she has taken pains to maintain as a joke. She submitted this was disrespectful. In reply, the Landlord acknowledged he operates machinery on the farming property but suggested it is the Tenant's numerous weekend guests who drove on and caused damage to the lawn.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the Two Month Notice was issued on the basis that the rental unit will be occupied by the Landlord or a close family member of the Landlord.

I have considered the evidence and submissions of the parties. I find there is insufficient evidence before me to conclude the Landlord's son intends to occupy the rental unit as claimed. There are several reasons for making this finding. First, the Landlord did not submit documentary evidence in response to the Application. Notably absent was a written statement or direct testimony from the Landlord's son concerning his intention to occupy the rental unit. I also note that K.B.'s son continues to reside in Toronto and had not relocated in accordance with the family plan. Second, I accept the Tenant's evidence the Landlord discussed potential rent increases with the Tenant, which was not disputed by the Landlord. Although not specifically raised by the Tenant, this is a concern as it raises an issue of good faith. Third, it does not make sense that the Landlord's son requires a 5-bedroom rental unit for himself when a 2-bedroom unit is currently available. This is particularly true when, as acknowledged the parties, the relationship between K.B. and his son has been strained. Accordingly, I order that the Two Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant also sought an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement. However, I find there is insufficient evidence before me to conclude the Tenant is entitled to this relief. The Tenant testified the Landlord drove on her lawn as a joke. The Landlord denied the allegation and suggested the Tenant's own friends are the cause of the problem. I also note I was not referred to any provision of the *Act*, regulations, and/or the tenancy agreement with which the Landlord should comply. This aspect of the Application is dismissed.

Having been successful, I grant the Tenant \$100.00 in recovery of the filing fee paid to make the Application, which I order may be deducted from a future rent payment at the Tenant's discretion.

Conclusion

I order that the Two Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

I order that the Tenant may retain \$100.00 from a future rent payment, at her discretion, in recovery of the filing fee paid to make the Application.

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: July 10, 2018

Residential Tenancy Branch