



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing dealt with the tenant's 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 (the "2 Month Notice") pursuant to section 49;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; 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 given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The named landlord was represented by their agent who gave evidence with the assistance of a family member assisting in parts.

As both parties were present service of documents was confirmed. The tenant testified that they were served with a first 2 Month Notice on April 30, 2018 and a second dated May 12, 2018. The landlord confirmed receipt of the tenant's application for dispute resolution dated May 12, 2018, the amendment dated May 14, 2018 and evidence. Based on the undisputed testimonies I find that the parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should either of the 2 Month Notices be cancelled? If not is the landlord entitled to an order of possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee for their application from the landlord?

Background and Evidence

The parties agreed on the following facts. The tenant has been residing in the rental unit since 2014. The current monthly rent is \$1,348.00 payable on the first of each month. The tenant also pays a portion of the utilities for the rental building.

The landlord issued a 2 Month Notice dated April 30, 2018 which does not provide the address of the rental unit nor does it indicate the reason it was issued. The landlord issued a second 2 Month Notice dated May 12, 2018 which was completed and indicates that the rental unit will be occupied by the landlord or a close family member.

The landlord testified that the family members they intend to occupy the rental unit are the landlord's spouse's parents and brother. The landlord did not provide any information as to where they are currently residing, why they are seeking to move into the rental unit, why the rental unit was chosen, or any substantive details. The landlord did not submit any documentary evidence in support of their submission.

The tenant said that the landlord initially informed them that the family member who would be occupying the rental unit were the landlord's sister-in-law and their family. The tenant said that the hearing was the first time that they were informed the landlord intended their parents-in-law to occupy the rental unit. The tenant said that the application seeking that the landlord complies with the *Act* relates to the issuance of the 2 Month Notice for siblings who are not a close family member as defined in the *Act*.

Analysis

A Notice to End Tenancy must meet the form and content requirements of section 52 of the *Act* in order to be effective. As the 2 Month Notice of April 30, 2018 does not provide the address of the rental unit or the reason it is being issued, I find that it does not meet the requirements and is therefore not effective.

The 2 Month Notice issued on May 12, 2018 does meet the form and content requirements of the *Act*. In order to evict a tenant for landlord's use of the property the landlord has the burden of proving the reasons on the Notice.

The landlord indicated on the 2 Month Notice that the landlord or their family member intends to occupy the rental unit. I find that the landlord's evidence in support of their submission to be unconvincing, lacking details or the air of veracity and is insufficient to meet the burden of proof.

I found the landlord's testimony to lack any of the details that a reasonable person would expect. I found the landlord's testimony to be evasive and they failed to answer questions put to them. There is insufficient documentary evidence in support of the landlord's submissions. I am not at all convinced by the landlord's evidence that the 2 Month Notice was issued for the purposes stated on the Notice.

Consequently, I allow the tenant's application and cancel the 2 Month Notice. This tenancy will continue until ended in accordance with the Act.

As the tenant's application was successful the tenant may recover the \$100.00 filing fee for their application. As this tenancy is continuing the tenant may satisfy this monetary award by deducting \$100.00 from the next monthly rent payment.

Conclusion

The tenant's application is allowed. The 2 Month Notices of April 30, 2018 and May 12, 2018 are cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is issued a one-time order that they may deduct \$100.00 from their next monthly rent payment.

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 12, 2018

Residential Tenancy Branch