



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL/OLC

Introduction

On June 15, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 2-Month Notice to End Tenancy for Landlord’s Use of Property, dated June 1, 2018, (the “Notice”) and to order the Landlord to comply with the Act. The matter was set for a participatory hearing via conference call.

The Landlord and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

Residential Tenancy Branch Rule of Procedure 3.15 states the Respondent must ensure evidence that the Respondent intends to rely on at the hearing is served on the Applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the Respondent’s evidence must be received by the Applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In this case that means that the Landlord, as the Respondent, should have submitted his evidence package before August 3, 2018. As the Landlord submitted his evidence package on the day of the hearing, the evidence was not admitted or referred to in the hearing.

Issues to be Decided

Should the Notice be canceled in accordance with Section 49 of the Act?

Should the Landlord be ordered to comply in accordance with 62(3) of the Act?

Background and Evidence

The Tenant and the Landlord agreed that the current tenancy agreement began on May 1, 2016 and was a month-to-month tenancy that included the rent payment of \$690.00 per month, due on the first of each month. The Landlord currently holds a security deposit of \$345.00. The Tenant clarified that she has lived on the rental property since 2015 and had a different tenancy agreement prior to May 1, 2016.

The Landlord testified that he hand-delivered the Notice to the Tenant on June 1, 2018. The Notice stated that the Tenant must move out of the property by July 31, 2018. The Landlord explained that his organization recently purchased the residential property and their intention was to convert two of the residential units for meeting and office space and to provide occasional overnight use for their guests. The Landlord stated that he had given the Notice to the Tenant and had also provided a Two Month Notice to End Tenancy to a second tenant for the same purposes.

The Landlord explained that the correct legal address for the residential property was provided on the Notice and felt that the address accurately described the Tenant's rental unit.

The Tenant agreed that the Notice was received on June 1, 2018; however, testified that there were some administrative errors on the Notice including the wrong address and that it was filled in improperly. The Tenant submitted a copy of the Notice that stated the Landlord's reason for the Notice:

"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)."

The Tenant did not feel the Landlord would be using the rental unit for the above purposes and had provided a text that indicated the Landlord would be using the rental unit for an office and meeting area.

The Tenant did not testify or provide any reasons to support her Application to have the Landlord ordered to comply with the Act.

Analysis

On May 17, 2018, new provisions came into force that apply to Notices to End Tenancy issued under Section 49 of the Act. Section 49(2) of the Act authorizes a landlord to end a tenancy for a purpose referred to in Subsection (6) by giving Notice to end the tenancy effective on a date that must be not earlier than 4 months after the date the tenant receives the Notice and the day before the day in the month that rent is payable under the Tenancy Agreement.

I initially advised the parties that the corrected effective vacancy date of the Notice would be August 31, 2018, in accordance with Section 53 of the Act. Upon further review of the new legislation, I find that the Landlord did not use the correct form to end the tenancy in accordance with Section 52 of the Act, and instead should have used a Four Month Notice to End Tenancy. This form would have allowed the Landlord to properly advise the Tenant the reason for the end of tenancy, specifically:

“...to convert the rental unit to a non-residential use.”

As a result of the above, I find that the Notice should be canceled and the tenancy continue until ended in accordance with the Act.

As the Tenant failed to provide sufficient evidence or reasons that the Landlord should be ordered to comply with the Act, I dismiss this part of the Tenant's Application without leave to reapply.

Conclusion

I order that the Notice should be canceled and that the tenancy continue in accordance with the Act.

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: August 13, 2018

Residential Tenancy Branch