



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, CNL, OLC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 1 Month Notice to End Tenancy for Cause, to cancel a 2 Month Notice to End Tenancy for Landlord's Use of the Property, for the Landlord to comply with the Act regulations and tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on August 15, 2018. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an Order to cancel the Notices to End Tenancy?
2. Has the Landlord complied with the Act, regulation and tenancy agreement?

Background and Evidence

This tenancy started on June 1, 2016 as a month to month tenancy. Rent is \$1,490.00 with the male Tenant paying \$625.00 and the female Tenant paying \$865.00 per month payable in advance of the 1st day of each month. No security deposit was required for this tenancy.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated August 3, 2018 and a 2 Month Notice to End Tenancy for Landlord's Use of the Property on August 13, 2018. The Landlord said he served both Notices in person on the same date as the Notices were completed.

The Landlord said the reason on page two of the 1 Month Notice is that the Tenants were no longer in the Landlord's employ. The Landlord said they did not understand the

reasoning on page two when they completed the form and this is incorrect. The Landlord said he is withdrawing this Notice to End Tenancy dated August 3, 2018.

The Landlord continued to say that the 2 Month Notice to End Tenancy for Landlord's Use of the Property is so that his aunt and uncle can move into the rental unit.

The Landlord was told by the Arbitrator that aunts and uncles do not qualify as close family members under the Residential Tenancy Act. Therefore the Notice to End Tenancy is not valid.

The Tenant said the Landlords have been trying to end this tenancy since the Tenants would not accept a rent increase higher than the yearly allowable amount. The male Tenant said the two Notices to End Tenancy are not correct or valid and they want to continue the tenancy.

Analysis

The Landlord has withdrawn the One Month Notice to End Tenancy for Cause dated August 3, 2018; therefore that Notice is no longer at issue and has no effect on the tenancy.

Section 49 of the Act says:

49 (1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

The Landlord said that the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated August 13, 2018 was given to the Tenants so that the Landlord's aunt and uncle could move into the rental unit. Aunts and uncles are not included in the definition of a close family member under the Residential Tenancy Act; therefore the reason on the 2 Month Notice to End Tenancy for Landlord's Use of the Property does not comply with the Act and the reason is not valid. Consequently I cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated August 13, 2018 as the reason given to end the tenancy does not comply with the Act and is not valid. I order the tenancy to continue as agreed.

As the Tenants have been successful in this matter I order the Tenants to recover the \$100.00 filing fee for this proceeding by deducting it from the November, 2018 rent. The November, 2018 rent is adjusted to \$1,390.00.

Conclusion

I order the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated August 13, 2018 is cancelled and the tenancy is ordered to continue as set out in the verbal tenancy agreement.

The November, 2018 rent payment is adjusted to \$1,390.00 so that the Tenants can recover the filing fee of \$100.00 for this proceeding from the Landlord.

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: October 01, 2018

Residential Tenancy Branch