



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

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 of Property (the "2 Month Notice") pursuant to section 49; and
- an order requiring the landlord to comply with the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 62.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he had received the tenant's application package. The landlord confirmed that he did not provide any documentary evidence for this hearing. As the landlord did not raise any issues regarding service of the application package, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, facilitation of a mutual agreement to settle this dispute was attempted, however the parties could not reach an agreement.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 1, 2012 on a month-to-month basis. Rent in the amount of \$469.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$212.50 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

On September 6, 2018 the landlord issued the 2 Month Notice, indicating that the rental unit will be occupied by the landlord or the landlord's close family member. The notice indicates an effective move-out date of November 30, 2018. The landlord testified that the landlord's son will move into the unit, to assist in managing the multiple units.

During the hearing, the tenant confirmed receipt of the 2 Month Notice and testified that he believes the unit will be occupied by the landlord's son.

Analysis

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Although the tenant filed an application to cancel the 2 Month Notice, he did not question the good faith of the landlord. Accordingly, I find the landlord has met his onus that he is acting in good faith and dismiss the tenant's application to cancel the 2 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the parties testimony and the 2 Month Notice before me, I find the 2 Month Notice complies in form and content. As the 2 Month Notice complies in form and content and as the tenant's application has been dismissed I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

As the tenancy is set to end, and as a landlord's compliance may only be sought in relation to an ongoing tenancy I dismiss this claim as well.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed without leave to reapply.

An order of possession is granted to the landlord **effective at 1:00 p.m. on November 30, 2018.**

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 19, 2018

Residential Tenancy Branch