



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, FFT

Introduction

On November 28, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking emergency repairs pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and A.P. attended the hearing as an agent for the Landlord; however, he called into the hearing at 11:22 AM just prior to the hearing closing. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package by hand and A.P. confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant also confirmed that she served the Landlord the evidence by hand on December 23, 2018 and A.P. confirmed receipt of this package. Based on this undisputed testimony, I am satisfied that the Tenant's evidence was served to the Landlord in accordance with Rule 3.14 of the Rules of Procedure. Thus, this evidence was accepted and considered when rendering this decision.

A.P. confirmed that the Landlord did not submit any evidence for consideration.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that her other claim would be dismissed, and that the Tenant is at liberty to apply for this claim under a new and separate Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on January 1, 2013 and rent was established at \$800.00 per month, due on the first day of each month. A security deposit of \$350.00 was paid.

Both parties agreed that the Notice was served by hand in mid-November 2018. The reason the Landlord served the Notice is because "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 advised that she received the Notice and subsequently made her Application to cancel the Notice. The effective date of the Notice was January 31, 2019.

A.P. advised that he wants to move into the rental unit with his sister. He stated that he lives upstairs with his mother and has a difficult relationship with her; therefore, he wants to move into the rental unit for some independence. As well, he stated that his sister goes to school and her commute takes an hour and a half each way. If she lived in the rental unit, she could study peacefully at home in the rental unit without being bothered constantly by her mother. He advised that his mother and grandmother constantly bother them, and he stated that he already set ground rules for how much freedom he should have away from them if he were to have his own living area.

The Tenant advised that A.P.'s mother has mentioned several times that she is struggling with money and had to raise the rent. When A.P. advised that him and his sister would pay minimal rent to his mother, the Tenant questioned how logical this is as the Landlord would then be suffering a monetary loss if the tenancy ended. The Tenant is concerned that this is a ploy by the Landlord to renovate the rental unit and increase the rent. The Tenant advised that the Landlord sleeps all day and works all night, so she doubts A.P.'s claims that the Landlord bothers them frequently. As well, she stated that she has never heard any noise or instances of the Landlord bothering her children in the entire time she has occupied the rental unit.

The Tenant advised that his grandmother was planning to move from the upstairs in approximately September 2019. If this were to happen, the Landlord plans to move downstairs with A.P. and his sister, and then the entire upstairs would be rented. As the rental unit is a two-bedroom suite, A.P. and his sister would then have to share a room.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord 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.

When reviewing the totality of the evidence before me, I find it important to note that the Landlord did not provide any supporting documentary evidence to substantiate that a close family member would be moving into the rental unit, pursuant to the Notice. Furthermore, A.P.'s testimony that he would gain freedom from his mother and grandmother does not make sense to me as they would still be living upstairs and in close proximity to him. Furthermore, he stated that should his grandmother move out, the intention is for the mother to move downstairs into the rental unit as well, and that him and his sister would then be required to share a room. This testimony appears contradictory to me as the reason that A.P. and his sister wished to move into the rental unit in the first place was to gain freedom, independence, and peace from their mother.

Under the circumstances described, and based on the inconsistencies and dubious nature of A.P.'s testimony, I do not find that the Landlord has provided sufficient or compelling evidence to persuade me that the Notice was issued in good faith for the reason stipulated on the Notice. As such, I am not satisfied, on a balance of probabilities, of the validity of the Notice. Ultimately, I find that the Notice of November 16, 2018 is of no force and effect.

As the Tenant was successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. As such, I permit the Tenant to deduct this amount from a future month's rent.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of November 16, 2018 to be cancelled and of no force or effect.

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: January 11, 2019

Residential Tenancy Branch