



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

The tenant applied 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;
- an order compelling the landlord to comply with the Act, regulation or tenancy agreement; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord confirmed that he received the tenants' documentary package. The landlord did not submit any documentation for this hearing.

Issues(s) to be Decided

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

Should the tenant be given an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the month to month tenancy began on July 15, 2010. The current rate payable is \$1200.00 which is

due on the first but the tenant always pays late on the last day of the month. The landlord testified that he wishes to end the tenancy so that his parents can move into the suite. The landlord testified that their temple is within walking distance and would be very convenient for them. The landlord testified that on December 31, 2018 he issued a Two Month Notice to End Tenancy for Landlords Use of Property for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The landlord testified that the tenancy agreement submitted by the tenant is a forgery and that he never signed it. The landlord testified that the tenancy agreement has always been a month to month agreement and not a fixed term. The landlord requests an order of possession for March 1, 2019.

The tenant gave the following testimony. The tenant testified that the landlord approached him in June 2018 to fill out a tenancy agreement. The tenant testified that at the request of the landlord they signed a fixed term tenancy from July 1, 2018 to July 1, 2021. The tenant testified that the landlord asked him to fill out the form for banking and insurance purposes. The tenant wants the landlord to comply with the tenancy agreement and allow the tenancy to run until July 1, 2021.

Analysis

The first issue before me is whether the parties are on a fixed term tenancy or a month to month. After reviewing the tenancy agreement submitted by the tenant I make the following findings. I find that the signature of the landlord on the tenancy agreement bears no similarity to the one on the Two Month Notice issued by the landlord. In addition, the tenant stated his original rent was \$1000.00 yet paid a \$600.00 security deposit. Furthermore, in the length of term section; it was blank. Also, the landlord testified that the rent is due on the 1st of the month yet on the tenancy agreement it states the rent is due on the "31st" of each month. It is worth noting that the agreement states that the parties signed this agreement on July 15, 2010 yet the form is an RTB form that was generated in May 2018. Based on all of the above discrepancies, I find that this agreement cannot be relied upon and find that this tenancy is on a month to month basis.

The next issue to consider is the good faith intention of the landlord. When a landlord issues a notice under section 49 of the Act the landlord is required to provide sufficient

evidence to support the issuance of the notice. The tenant has called into question the landlords "good faith" intention of issuing the notice. The tenant alleged that the landlord has issued a notice like this in the past in his other properties but does not carry out what is noted on the notice. The landlord gave clear, concise and compelling testimony. The landlord outlined the advantages in having his elderly parents move close to their temple to worship and meet with friends. I find on a balance of probabilities that the landlord has issued the notice in good faith and intend to have his parents move in.

The Two Month Notice to End Tenancy for Landlord's Use of Property is confirmed, it is of full effect and force. The tenancy is terminated. The notice complies with section 52 of the Act and therefore the landlord is entitled to an order of possession pursuant to section 55 of the Act.

The tenant has not been successful in his application.

Conclusion

The landlord is granted an order of possession. The tenancy is terminated.

The tenants' application is dismissed in its entirety without leave to reapply.

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: February 11, 2019

Residential Tenancy Branch