



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 2, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated December 18, 2018; and
- an or granting the return of the filing fee

The Tenant and the Landlord attended the hearing, each provided affirmed testimony.

The Tenant testified that she served the Application package as well as documentary evidence to the Landlord by registered mail. The Tenant was unsure as to when she mailed the package to the Landlord, however, the Landlord confirmed receiving the Application package as well as documentary evidence on January 7, 2019. The Landlord did not submit any evidence in preparation for the hearing.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, I find the above documents were sufficiently served pursuant to sections 88 and 89 *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act (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 is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated December 18, 2018, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Landlord testified that he served the Tenant with the Two Month Notice on December 18, 2018, with an effective vacancy date of February 28, 2019, by posting it on the door of the dispute address. The Tenant confirmed having received the Two Month Notice on the same day. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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 Landlord stated that he served the Two Month Notice to the Tenant after gaining employment in the area, which will require him to travel to town a few times per month. The Landlord testified that he and his son own the three level home which contains three separate units. Currently, the Landlord's son occupies the top floor, and the Tenant occupies the bottom suite. The middle floor has recently been renovated and is vacant. The Landlord testified that his son intends on taking over the middle suite and renovate the upper suite. In the meantime, the Landlord stated that he intends on

occupying the Tenant's bottom suite a few times per month while in town for work. The Landlord testified that he began his employment in January 2019.

For these reasons, the Landlord is seeking the Tenant vacate the rental unit on February 28, 2019, so that the Landlord can move in on March 1, 2019. The Landlord testified that he will not be performing renovation on the lower suite and that he intends on moving in as is.

In response, the Tenant indicated that she does not wish to move out of the rental unit as she suspects that the Landlord intends on conducting renovation to her suite rather than move in. The Tenant stated that the Tenant who previous occupied the rental unit above hers was given a Two Month Notice prior to vacating their rental unit in March 2018. The Tenant stated that the Landlord never occupied the rental unit, however, proceeded to conduct renovations. The Tenant states that she endured a significant amount of disturbance while these renovations took place, however, was accommodating as she felt as though she would be able to stay in her rental unit. The Tenant provided pictures and text messages in support.

After receiving the Two Month Notice, the Tenant feels as though she was used and doesn't feel as though the Landlord is acting in good faith. The Tenant states that the newly renovated suite above her is currently vacant and could be occupied by the Landlord should he need to occupy a space while in town.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may 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. The landlord states that he intends to occupy the tenant's rental unit why he is in town for work purposes.

The Landlord served the Tenant with the Two Month Notice on December 18, 2018, with an effective vacancy date of February 28, 2018, by positing it on the door of the dispute address. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on December 18, 2018 and filed their Application on January 2, 2019. Therefore, the Tenant is within the 15 day time limit under the *Act*.

The Landlord testified that he intends to move into the rental unit on March 1, 2019. The Landlord stated that he has gained employment in town which would require him to take possession of the rental unit to occupy the suite a few times per month. The Landlord submitted no evidence to support his claim.

The Tenant testified that the Landlord is acting in bad faith as she suspects that the Landlord is trying to evict her to perform further renovation to the house and her rental unit. The Tenant testified that the previous tenant above her suite was given a Two Month Notice for the same reason, however, the Landlord did not occupy their suite. Instead, the Tenant testified that there have been renovations taking place since March 2018 and that the suite above hers is currently vacant. The Landlord confirmed that there is currently vacant suite, however, the Landlord's son intends on moving in to commence renovation on the upper suite.

I find that there is insufficient evidence from the Landlord to demonstrate that he is intending to occupy the rental unit in good faith. The Tenants has provided sufficient evidence indicating that the Landlord has been conducting significant renovations at the residence. Furthermore, both parties confirmed that there is currently a vacant suite in the residence which could be occupied by the Landlord. I find that the Landlord provided no evidence indicating that his son intends to occupy the vacant suite.

In light of the above, I cancel the Two Month Notice, dated December 18, 2018.

I order the tenancy to continue until ended in accordance with the Act.

As the Tenant has been successful, I find she is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from next month's rent.

Conclusion

The Tenant's application is successful. The Two Month Notice issued by the Landlord dated December 18, 2018 is cancelled.

The tenancy will continue until ended in accordance with the Act.

As the Tenant has been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from the next month's rent.

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 20, 2019

Residential Tenancy Branch