



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution, notice of hearing and all evidence (the “Materials”) in person on March 25, 2019 in accordance with Section 89 of the Act. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy under written agreement started on April 17, 2017 for a fixed term to end April 30, 2020. Rent of \$1,000.00 is payable on the first day of each month. No security deposit was collected by the Landlord. On February 27, 2019 the Tenant was given a two month notice to end tenancy for landlord’s use (the “Notice”). The reason stated on the Notice is that the landlord or a close family member of the landlord will occupy the unit. The Tenant argues that the Landlord cannot end the tenancy for this reason prior to the end of the fixed term and that the Notice should be cancelled.

Analysis

Section 49(2)(a)(iii) of the Act provides that a landlord may end a tenancy for landlord's use by giving notice to end the tenancy effective on a date that must be, if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy. Based on the undisputed evidence that the Notice sets out an effective date that is earlier than the end date of the fixed term tenancy I find that the Notice is not valid. The Notice is therefore cancelled and the tenancy continues.

As the Tenant's claim has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable.

Conclusion

The Notice is cancelled.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 15, 2019

Residential Tenancy Branch