



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNL FF

Introduction

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

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to service of the tenant's application. The landlord did not submit any evidence in response to the tenant's application.

Issues

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

Is the tenant entitled to recover the filing fee?

Background & Evidence

This tenancy began on October 1, 2013. The current rent is \$750.00 per month. The rental unit is a two bedroom basement suite of a house and the landlord resides upstairs.

The landlord served the tenant with a Two Month Notice on May 5, 2019. The Two Month Notice is in an older form. The reasons for the Two Month Notice is the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property and that the tenant no longer qualifies for subsidized housing.

The landlord confirmed that the rental unit is not a subsidized housing unit. The landlord testified that the tenant is her ex-boyfriend and that the unit was given to him at a reduced rate in exchange for him doing some work around the house. The landlord just wanted the tenant to uphold his end of the bargain. The tenant was agreeable to doing some work around the property. The parties agreed to communicate to put the terms of any such agreement in writing. The landlord agreed to withdraw the Two Month Notice as it was not in the proper form nor was it issued for the correct reasons.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving a notice to end tenancy. Section 49(7) requires that a notice must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act states as follows: **(emphasis for ease)**

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

I find that the landlord did not give the tenant a Notice to End Tenancy in the approved form as per the requirements of Section 52 of the Act. The landlord used an older form and the Act has since changed requiring a Four Month Notice for the reason indicated by the landlord. In either event, the landlord agreed to withdraw the Two Month Notice.

Accordingly, the Two Month Notice dated May 6, 2019, is hereby cancelled and of no force or effect.

The tenant is entitled to recover the filing fee for this application. The tenant may reduce a future rent payment by \$100.00.

Conclusion

I allow the tenant's application to cancel the landlord's Two Month Notice, dated May 6, 2019, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: June 21, 2019

Residential Tenancy Branch