



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice").

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no issues were raised regarding service of the application.

Thereafter the participants were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

Both parties confirmed not submitting any documentary evidence in this case. More importantly, neither party submitted a copy of the Two Month Notice.

During the hearing, I asked the tenant to read the details from the Two Month Notice she had before her. The landlord confirmed those details.

At the end of the hearing, I instructed the tenant to send in a copy of the complete Two Month Notice before 3:00 p.m., the same day of the hearing. The parties were informed that if the tenant complied with this request, I would consider the merits of the tenant's application. The parties were also informed that if the tenant failed to comply, I would dismiss the tenant's application, without leave to reapply.

I note that the tenant uploaded a copy of the Two Month Notice shortly after the hearing. The tenant also submitted other documentary evidence, despite my instructions that I would only consider her evidence of the Two Month Notice. I inform the tenant that I did not read or consider her additional evidence, as it was not submitted to the landlord and in advance of the hearing, as required by the Rules.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Two Month Notice?

Background and Evidence

The undisputed evidence is that this tenancy began on February 1, 2018 and that monthly rent is \$1,600.00.

The tenant submitted that she received the Two Month Notice from the landlord on May 26, 2019, by personal service, and the Two Month Notice listed an end of tenancy date of August 1, 2019.

The Two Month Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenant filed her application for dispute resolution in dispute of the Two Month Notice on June 9, 2019.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a Two Month Notice.

The landlord provided no documentary evidence and instead said the owner of the rental unit told him to issue the Notice because his son was going to move in.

The landlord here confirmed he is a landlord's agent, and said he issued the Notice at the owner's instruction.

The tenant submitted that she was told by the landlord here that the rental unit was going to be sold and that there is a showing scheduled. The tenant submitted additionally that the rental unit, a condo in a multiple unit building, does not allow rental property.

Analysis

Based on the foregoing evidence, and on a balance of probabilities, I find as follows:

Once the tenant made a timely application to dispute the Notice, the landlord became responsible to prove the Notice is valid.

I find the landlord provided no evidence that the rental unit was going to be used for the stated purpose. A second-hand statement given by the owner to the landlord, the owner's agent, does not meet the landlord's burden of proof. Rather, I find the tenant provided clear, convincing, and undisputed evidence that the rental unit will be used for other purposes, such as it being listed for sale.

Due to the above reasons, I find that the landlord has provided insufficient evidence to prove the reason listed on the Notice.

As a result, I find the landlord's Two Month Notice to End Tenancy for Landlord's Use of the Property, dated and issued on May 26, 2019, for an effective move out date of August 1, 2019, is not valid and not supported by the evidence, and therefore has no force and effect.

I order that the Two Month Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

Conclusion

The landlord's Two Month Notice to End Tenancy for Landlord's Use of the Property dated May 26, 2019, is not valid and not supported by the evidence and the tenant is granted an order cancelling the Notice.

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: July 29, 2019

Residential Tenancy Branch