



Dispute Resolution Services

Page: 1

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 and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy started in December of either 2016 or 2017. Rent of \$750.00 is payable on the first day of each month. No security deposit was collected. On May 29, 2019 the Landlord served the Tenant with a two month notice to end tenancy for landlord’s use (the “Notice”) by posting the Notice on the door. The reason stated on the Notice is that the landlord or a close family member of the landlord will occupy the unit. The Landlord intends to have its nephew occupy the unit.

Analysis

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(1) of the Act defines "**close family member**" as the individual's parent, spouse or child, or the parent or child of that individual's spouse. Based on the agreed facts that the Landlord intends to have its nephew occupy the unit and as a nephew is not a close family member as defined in the Act I find that the reason for the Notice is not valid. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

As the Tenant 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 not valid and is cancelled. The tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$370.00**. 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: July 30, 2019

Residential Tenancy Branch