



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMI REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 05, 2019 (the "Application"). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 25, 2019 (the "Notice").

The Tenant appeared at the hearing. W.C. appeared for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenant's evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed there is a written tenancy agreement in this matter. W.C. testified that it is between the owner of the rental unit care of the Landlord and the Tenant. The Tenant testified that it is between her and the Landlord and does not include the owner of the rental unit. The parties agreed on the following. The tenancy started October 01, 2017. The tenancy was for a fixed term of one year then became a month-to-month tenancy. Rent is \$1,076.25 per month due on the first day of each month.

Neither party submitted a copy of the Notice. I told W.C. to submit it before 3:00 p.m. today or it would be cancelled. I had not received the Notice by 3:00 p.m. on the hearing date.

The parties agreed the Notice is dated June 25, 2019. The parties agreed the grounds for the Notice are that the “rental unit will be occupied by the landlord or the landlord’s close family member...”

W.C. testified that he put the Notice in the mail slot for the rental unit on June 26, 2019. The Tenant testified that she received the Notice June 27, 2019 and that it had been slipped under her door.

W.C. testified as follows. The rental unit building is family owned. The daughter of one of the partners got a job as a teacher and is moving to BC. The daughter is going to move into the Tenant’s rental unit. The Landlord chose this unit because it does not have another unit below it. The daughter has allergies so they are going to renovate the rental unit to change the flooring from carpet to hardwood flooring.

W.C. testified that S.D. owns the rental unit. He testified that S.D. is a corporation with 11 partners that are all family. W.C. testified that the Landlord acts as agent for S.D.

Analysis

The Notice was issued pursuant to section 49(3) of the *Residential Tenancy Act* (the “Act”). The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. Given the testimony of the parties about service, I accept that the Tenant received the Notice June 27, 2019. The Tenant filed the Application July 05, 2019, within the 15-day time limit.

Section 49(3) of the *Act* states:

(3) 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. [emphasis added]

W.C. testified that S.D. owns the rental unit and that a daughter of one of the partners is moving into the rental unit. S.D. is not an individual, it is a company. Therefore, S.D. cannot issue a notice pursuant to section 49(3) of the *Act*. I find the Notice invalid on this basis.

I note that if S.D. is a family corporation, there is a separate ground for this on the Notice which states:

The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Further, a notice to end tenancy issued by a family corporation would be issued pursuant to section 49(4) of the *Act* and not section 49(3) of the *Act*.

I also note that the Landlord failed to submit a copy of the Notice and I did not receive a copy of the Notice as of 3:00 p.m. on the date of the hearing as requested. Therefore, I would have been unable to determine whether the Notice complies with section 52 of the *Act* in form and content as required and would have cancelled the Notice on this basis in any event.

In the circumstances, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until 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 *Act*.

Dated: August 23, 2019

Residential Tenancy Branch