



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The named landlord was represented by their agents. The agent WR primarily spoke on behalf of the landlord (the "landlord"). Both parties were assisted by counsel and an advocate, respectively.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files instead of a single pdf file with numbered pages, The file names are inconsistent and unclear as to their contents so that it is confounding for the reader. While files are numbered they have been uploaded non-sequentially making it difficult to locate files. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Preliminary Issue – Res Judicata

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue on which a previous binding decision has been made involving the same parties.

The tenant submits that the present 2 Month Notice dated June 26, 2019 was issued on the same grounds as the earlier 2 Month Notice of April, 2019. The tenant submits that the evidentiary basis for the issuance of both notices is identical and that a final and binding decision was made regarding the April, 2019 notice in a decision dated June 20, 2019 under the file number on the first page of this decision.

In the June 20, 2019 decision, Arbitrator Lee finds that:

After considering the totality of the evidence before me, it appears to me that the owner's daughter/agent, moved into the upper rental unit after that occupant was evicted and the agent proceeded to attempt to unilaterally change the terms and conditions of the existing tenancy agreement by reducing laundry usage, parking for the scooter, and use of the yard. I find that the Tenant's request for an order that the Landlord provide these services was made prior to when the 2 Month Notice was issued.

I find that the Landlord's recent attempts to end the tenancy for unsupported reasons suggests that the Landlord has an ulterior motive to end the tenancy and I find that the Landlord does not want to fulfil their obligations as ordered by an Arbitrator. I find that it is more likely than not that the Landlord is attempting to end the tenancy to avoid obligations under the tenancy agreement.

Based on the findings that the landlord had ulterior motives to end the tenancy, Arbitrator Lee allowed the application to cancel the 2 Month Notice of April 2019 and set aside that notice in the decision of June 20, 2019.

The landlord subsequently issued the present 2 Month Notice dated June 26, 2019, immediately following the issuance of the earlier decision. The landlord gave some evidence that the issues surrounding the landlord's obligation to provide certain services under the tenancy agreement have been either resolved or made moot since the earlier hearing. The landlord confirmed that the present 2 Month Notice is issued for the same grounds as the April 2019 notice. The landlord stated that their position as regards this tenancy has not changed from the time that the earlier 2 Month Notice was issued. The landlord submits that there have been some changes in the surrounding circumstances that go towards demonstrating that there are no ulterior motives to end the tenancy.

I do not find the landlord's submission that this is a new matter to be decided upon based on new facts to be convincing or supported in the evidence. I find that the matter before me is substantially identical to the matter considered and determined in the June 20, 2019 decision.

The landlord confirmed that the present 2 Month Notice was issued for exactly the same reasons as the first notice. I do not find that the facts had changed in any significant way when the second notice of June 26, 2019 was issued. I find the landlord's evidence of their

compliance with an Order of this Branch that the landlord act in accordance with the tenancy agreement to simply be cosmetic additional evidence in support of their identical notice to end tenancy, rather than a change in circumstances that arose between the June 20, 2019 decision and the issuance of the subsequent 2 Month Notice.

I find the issuance of the 2 Month Notice within a week of receiving the earlier decision, for reasons identical to the initial 2 Month Notice to be an attempt by the landlord to reargue a matter that has been considered and determined. I accept the testimony of the landlord that their reasons for issuing both 2 Month Notices are identical. Based on the materials submitted I do not find that there has been a material change in circumstances that would require substantially new facts to be considered.

I find that the subject matter of this application, specifically the grounds for issuing the 2 Month Notice to End Tenancy and whether it has been made in good faith, has been conclusively determined in the decision of June 20, 2019. I find that the decision of June 20, 2019 was final and binding. Furthermore, the parties to the present application are the same as those for the earlier hearing.

For these reasons I find that this matter is *res judicata* as the matter has already been conclusively decided and cannot be decided again.

This tenancy continues 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 *Residential Tenancy Act*.

Dated: September 05, 2019

Residential Tenancy Branch