



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, OLC, RR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 2, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated August 1, 2019;
- an order restricting or suspending the Landlord's right to enter;
- an order that the Landlord comply with the *Act*, tenancy agreement or regulation; and
- an order granting a rent reduction.

The Tenant and the Landlord, M.G., attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlords in person. The Tenant could not recall what day the service took place; however, the Landlord confirmed receipt. The Landlord testified that she served the Tenant with her documentary evidence in person on September 4, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the Two Month Notice.

The Tenant's request for an order restricting or suspending the Landlord's right to enter, an order that the Landlord comply with the *Act*, tenancy agreement or regulation, and an order to reduced rent are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated August 1, 2019, pursuant to Section 49 of the *Act*?
2. If the Tenant is not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the periodic tenancy began on May 1, 2019. The Tenant pays rent in the amount of \$1,350.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$675.00 which the Landlords continue to hold. The Tenant provided a copy of the tenancy agreement in support.

The Landlord testified that she served the Tenant in person with the Two Month Notice on July 31, 2019, with an effective vacancy date of October 1, 2019. The Tenant confirmed having received the Two Month Notice on the same day. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The Landlord stated that she served the Two Month Notice to the Tenant as she intends on having her parents move into the basement rental unit which is currently occupied by the Tenant. The Landlord stated that she and her husband own the home and live upstairs. The Landlord stated that their circumstances have changed and that they can no longer afford to pay childcare. The Landlord stated that she plans to move her parents into the basement rental unit as they are able to provide childcare for the Landlords. The Landlord stated that as a result, the Landlords wish the end the tenancy with the Tenant on October 1, 2019 at which point Landlord's parents will occupy the rental unit.

In response, the Tenant stated that he feels as though the Landlords have served the Two Month Notice in bad faith. The Tenant stated that he has brought forward several concerns to the Landlords and that they have not taken any steps to address them. The Tenant stated that the Landlord has turned off the heat and that their children make noise during the night, preventing him from having his quiet enjoyment of the rental unit. The Tenant stated that the Landlords stomp on the floor above his bedroom, which prevents him from sleeping well at night. The Tenant stated that the Landlords consume alcohol and have been difficult to deal with when asked to assist with a rent subsidy application. The Tenant feels as though the Notice was served out of spite for the Tenant voicing his concerns to the Landlords.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlord stated that her parents intend to occupy the Tenant's rental unit in order to provide childcare for the Landlords.

The Landlord served the Tenant in person with the Two Month Notice on July 31, 2019, with an effective vacancy date of October 1, 2019. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days

after the date the Tenant receives the notice. The Tenant received the Two Month Notice on July 31, 2019 and filed the Application on August 2, 2019. Therefore, the Tenant is within the 15 day time limit under the *Act*.

The Landlord testified that her parents intend to move into the rental unit on October 1, 2019. The Tenant stated that he doesn't feel as though Landlord served the Two Month Notice in good faith, instead, the Tenant expressed his displeasure with the tenancy and stated that his concerns have been dismissed by the Landlords, which has resulted in them wishing to end the tenancy.

Although the Tenant stated that the Landlords have dismissed his concerns regarding ongoing heat and noise issues at the rental unit, there is no documentary evidence before me indicating that the Tenant has notified the Landlords about his concerns throughout the tenancy and that the Landlords have not addressed these concerns. I find that the Tenant has provided insufficient evidence to demonstrate that the Two Month Notice has been issued by the Landlords in an attempt to avoid any obligations to address the Tenant's concerns under the Act. In contrast, the Landlord testified that the Two Month Notice has been served because her parents intend to occupy the rental unit as of October 1, 2019, and the Tenant did not dispute this testimony. As a result, I find that I am satisfied by the Landlord, on a balance of probabilities, that they have not served the Two Month Notice in bad faith.

As such, I dismiss the Tenants Application to cancel the Two Month Notice dated August 1, 2019, without leave to reapply. The Landlords and the Tenant should be aware that if the Landlords fail to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlords an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective on October 1, 2019 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice dated August 1, 2019, is dismissed without leave to reapply. The Landlord is granted an order of possession effective on October 1, 2019 at 1:00PM. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme 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 *Residential Tenancy Act*.

Dated: September 18, 2019

Residential Tenancy Branch