



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, OLC, LRE, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”). The matter was set for a conference call hearing.

On August 14, 2019, the Landlord applied requesting an order of possession based on the issuance of a Two Month Notice To End Tenancy For Landlord’s Use Of Property.

On August 11, 2019, the Tenant applied to cancel a Two Month Notice To End Tenancy For Landlord’s Use Of Property. The Tenant also applied for an order that the Landlord comply with the Act, and to suspend or set conditions on the Landlords right to enter the rental unit.

The Tenant and Landlord’s agent (“the Landlord”) attended the hearing. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

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.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession based on issuance of a Two Month Notice To End Tenancy For Landlord’s Use Of Property?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on March 1, 2019 as a one-year fixed term tenancy that can continue thereafter on a month to month basis. Rent in the amount of \$1,250.00 is to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$625.00 to the Landlord.

The Landlord issued the Tenant a Two Month Notice dated July 29, 2019. The reason for ending the tenancy in the Notice states:

The rental unit will be occupied by the Landlord or the Landlords close family member (parent, spouse or child; or the parent or child of that individuals' spouse)

The Two Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that he received the Two Month Notice from the Landlord on July 29, 2019. The Tenant disputed the Two Month Notice on August 11, 2019.

The Landlord testified that he is dealing with some personal issues and will be moving back into the rental unit. He testified that his father, the home owner is sick with early stages of dementia. He testified that because his dad is sick he can get angry and doesn't fully understand privacy needs.

The Tenant testified that when he reports tenancy concerns to the Landlord the Landlord gets angry and call him a complainer. The Tenant feels that the Landlord is trying to end the tenancy because the Landlord does not want to deal with Landlord obligations under the Act. The Tenant testified that the Landlord frequently knocks on his door.

Analysis

Section 29 of the Act provides that a Landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- *the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- *at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
- *the purpose for entering, which must be reasonable;*

- *the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- *the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- *the landlord has an order of the director authorizing the entry;*
- *the tenant has abandoned the rental unit;*
- *an emergency exists and the entry is necessary to protect life or property*

Residential Tenancy Policy Guideline # 30 Fixed Term Tenancies provides that a Landlord may end a fixed term tenancy by issuing a notice to end tenancy if a Tenant fails to pay the rent, or if there is cause; however, a Landlord cannot give notice for Landlord's use of property that will end a fixed term tenancy before the end of the fixed term.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the Landlord and Tenant entered into a fixed term tenancy agreement that continues until March 1, 2020. I find that the Landlord cannot end a fixed term tenancy for the reason of Landlords use of property.

The Tenant's application to cancel the Two Month Notice To End Tenancy For Landlord's Use Of Property dated July 29, 2019, is successful. The Landlord's application is dismissed.

The Landlord and Tenant are to comply with section 29 of the Act regarding entry into the rental unit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's Application to cancel the Two Month Notice To End Tenancy For Landlord's Use Of Property dated July 29, 2019, is successful.

The Two Month Notice To End Tenancy For Landlord's Use Of Property dated July 29, 2019 is set aside.

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 *Residential Tenancy Act*.

Dated: October 15, 2019

Corrected November 18, 2019

Residential Tenancy Branch