



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

On September 7, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by registered mail and the Landlord confirmed that he received this package on September 13, 2019. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing and evidence package.

The Tenant confirmed that he served the Landlord additional late evidence by hand on October 22, 2019 and the Landlord confirmed that he received this package. However, he stated that because he received this package so late, he did not have time to review this evidence, and he was not prepared to respond to it. As service of this evidence did not comply with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and it will not be considered when rendering this decision. The Tenant was allowed to provide testimony with respect to this evidence during the hearing, however.

The Landlord advised that his evidence was served to the Tenant by hand on October 16, 2019 and the Tenant confirmed receipt of this package. In accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure for service of evidence, I am satisfied that the Tenant was appropriately served with the Landlord's evidence. This evidence was accepted and considered when rendering this decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that his other claims would be dismissed, and that the Tenant is at liberty to apply for these claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started as an unwritten, month to month tenancy on June 1, 2019. Rent was currently established at \$2,000.00 per month, due on the first day of each month. A security deposit was not paid.

The Landlord advised that the Tenant was served the Notice by hand on September 1, 2019. The reason the Landlord served the Notice is because "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 Tenant confirmed that he received the Notice that day and subsequently made his Application to cancel the Notice. The effective end date of the tenancy was noted as October 31, 2019.

The Landlord advised that he currently lives with his parents and that he was “kicked out” of his parents’ place. He stated that he issued the Notice in good faith and will be occupying the rental unit because he needs more space for himself and his partner. He stated that he needs more space as he has a service animal in training and would like more room in case he has to care for his parents or if they need to spend time away from their residence. He submitted a copy of a confirmation of movers, as documentary evidence, to substantiate that he is planning to move into the rental unit.

The Tenant stated that he had an oral agreement with the Landlord that he could live in the rental unit until he found a suitable alternate residence to purchase with his daughter. He stated that he had a conversation with the Landlord where the Landlord advised him that he would move into the basement and renovate the upper unit. He stated that the Landlord has moved his own belongings into the basement, and it is his belief that the Landlord will live there until the upper unit is renovated.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord’s right to 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

While the Landlord did not indicate that the dispute address on the Notice was for the “upper” portion of the residence, as the Tenant confirmed that he understood that the Notice pertained to his rental unit, I am satisfied that this was simply a clerical error, and this does not invalidate the Notice. Furthermore, the effective end date of the tenancy on the Notice was noted as October 31, 2019. As rent was due on the first of each month, and as this Notice was served on September 1, 2019, the effective date on the Notice of October 31, 2019 is incorrect as the Tenant is entitled to two, whole months’ notice. Section 53 of the *Act* allows for any incorrect dates to self-correct. As such, I find that the correct effective date of the Notice is November 30, 2019. Apart from these details, I am satisfied that the Two Month Notice to End Tenancy for Landlord’s Use of Property issued by the Landlord on September 1, 2019 complies with the requirements set out in Section 52.

In considering the Landlord's reasons for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. While the Landlord provided testimony with respect to why he requires possession of the rental unit, when he was asked to elaborate on why he would need the space to care for his parents if they already had their own residence that they lived at, he could not provide an answer and he then responded that the rental unit would provide them with a space to be away from their significant other, if necessary. I do not find that this response accorded with logic or common sense, and not being able to provide a rational answer causes me to doubt the reliability of his testimony. Furthermore, the Landlord did not provide any explanation, details, or evidence with respect to his testimony about the service animal in training.

I found that the Landlord appeared to take it as an affront when asked to elaborate on or detail his reasons submitted. Alternately, the Landlord may have not been prepared or did not expect to be asked to explain his reasoning further. Overall, I found the details he provided to be somewhat vague, overly general, and not entirely persuasive.

Moreover, the Landlord did not provide any supporting evidence from any other parties involved that corroborated his intention or need to occupy the rental unit, and evidence such as this would have been easily attainable. While the Landlord's main evidence was a copy of a confirmation that a mover was booked for November 4, 2019, I note that he has acknowledged to storing his belongings in the basement unit. While I accept that there is a likelihood that the Landlord may have considerably more property, necessitating a mover, I find that combined with the scant evidence submitted by the Landlord, I am not satisfied that this one piece of evidence substantially increases the weight of his arguments supporting that he intends to occupy the rental unit. In addition, given that the relationship of the parties had become somewhat contentious, and as this Notice was served only three months after the tenancy commenced, I am increasingly doubtful that this Notice was served in good faith.

Ultimately, while it may be the Landlord's intention to occupy the rental unit, based on the lack of evidence and the unconvincing testimony, I am not satisfied, on a balance of probabilities, that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of September 1, 2019 is cancelled and of no force and effect.

As the Tenant was successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of September 1, 2019 to be cancelled and of no force or effect. 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: October 28, 2019

Residential Tenancy Branch