



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the two month Notice to End Tenancy dated September 19, 2019 and setting the end of tenancy for November 30, 2019.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was served on the Tenant by mailing, on September 19, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on September 20, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated September 19, 2018?

Background and Evidence:

The tenancy began on February 1, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$1700 per month payable in advance on the first day of each month. The tenancy agreement provided that the rent is subsidized subject to the tenant's income. The tenant was paying a subsidized rent of \$500 a month

The Addendum to the tenancy agreement includes the following:

- Rent is related to the tenant's income.

- Changes in the tenant rent contribution are not subject to the RTA
- The tenant must provide a declaration of the tenant's financial and family situation on an annual basis to allow the landlord to calculate the rent.
- If the tenant fails to disclose or misrepresents any information will be deemed to be a material breach of the tenancy agreement entitling the landlord to tend the tenancy agreement.

The landlord testified as follows:

- All rental units in this complex are subsidized. If tenants no longer qualify they are required to vacate the rental unit to allow other low income clients to be accepted.
- The tenant misrepresented her financial status. She was collecting welfare and at the same time working.
- It was determined the tenant no longer qualified to receive a rent subsidy.
- The tenant vacated the rental unit in early October. Another low income family has moved into the rental unit.

The tenant gave the following evidence:

- She disputes that she is no longer qualified to receive the subsidy.
- She testified that she was only working a small portion of the time.
- She is on medication and in ill health.
- There is no one to assist her
- Her brother passed away recently.
- The landlord mistreated her requiring her to leave at the start of October.
- She is still entitled to live in the rental unit.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The tenant no longer qualifies for the subsidized rental unit

Analysis:

After carefully consider all of the evidence I determined there is no basis for an order to cancel the 2 month Notice to End Tenancy for the following reasons.

- The Regulations under the Residential Tenancy Act provide that the Act does not apply to whether a subsidy has been properly calculated.

- I determined the landlord has sufficient grounds to end the tenancy on the basis the tenant no longer qualifies for subsidized housing.
- The tenant failed to provide sufficient evidence to prove there was a basis to cancel the 2 month Notice to End Tenancy.
- The tenancy came to an end in early October when the tenant vacated the rental unit.
- The tenant's testimony the landlord mistreated her by requiring her to pay the full non subsidized rent for the October and November is not correct. The tenant produced a letter stating that on compassionate grounds the landlord would allow her to pay \$500 per month for each of those months.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy without leave to re-apply.

As the tenant vacated the rental unit in early October and a new family is living in the rental unit I determined it was not necessary to issue an Order of Possession.

This decision is final and binding on the parties.

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: November 28, 2019

Residential Tenancy Branch