



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-2M, MNDC, FF

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 of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence in person (to the tenant's son) on October 18, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenant's application was clarified in which he stated that he was not seeking any additional monetary claims except for recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 month notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2010 on a month-to-month basis as per the signed tenancy agreement dated February 1, 2010. The monthly rent was \$560.00 payable on the 1st day of each month. The rent was later changed to the 5th day of each month by the tenant's request. A \$280.00 security deposit was paid.

Both parties confirmed the landlord served the tenant with the 2 months notice to end tenancy dated September 27, 2019 on September 27, 2019 in person. The 2 month notice provides for an effective end of tenancy date of November 30, 2019 and one reason selected as:

All the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant stated that he does not believe all of the conditions for the sale have been satisfied. The tenant stated that the property is a duplex and the purchaser moved into the adjoining unit. The tenant stated that on November 1, 2019 he asked the new owner who he should pay the monthly rent too. The tenant stated that the purchaser had told him on that date that the sale had not yet been completed. The tenant claims that based on this the 2 month notice should not be valid.

The landlord confirmed that on November 1, 2019 that all the conditions of the sale had not yet been met and that he had subsequently only received a verbal request to have vacant possession of the rental unit from the co-purchaser. The landlord clarified that the duplex was purchased by two siblings and that the male had moved into the adjoining unit and that the notice was given for the female co-purchaser to occupy.

Analysis

Section 49 (5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit if all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based. The landlord confirmed in his direct testimony that the sale had not yet been completed on September 27, 2019 when he issued the notice to the tenant. The landlord also confirmed that he did not receive a written request from the purchaser for vacant possession of the rental unit. The landlord did not meet his onus of proof. The 2 month notice dated September 27, 2019 is set aside and cancelled. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application to cancel the 2 month notice dated September 27, 2019 is granted.

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 07, 2019

Residential Tenancy Branch