



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding One Motion Investment
Inc. and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes

Tenant: CNR, CNL
Landlord: MNRL, OPL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on January 14, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 13, 2020 (the “10 Day Notice”);

The Landlord’s Application for Dispute Resolution was made on January 17, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

Preliminary Matters

The Tenant submitted an amendment to the Tenant’s Application on January 31, 2019 to cancel a Two Month Notice to End Tenancy for Landlord’s Use (the “Two Month Notice”) dated January 18, 2020. The Landlord submitted an amendment to the Landlord’s Application on February 5, 2020 to include a claim for an order of possession in relation to the 10 Day Notice and the Two Month Notice.

The Tenant as well as the Landlord’s Agent, T.B., attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 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.

At the start of the hearing, T.B. stated that she would like to withdraw the Landlord's claims for an order of possession and for monetary compensation relating to unpaid rent. The Landlord stated that the 10 Day Notice to End Tenancy dated January 13, 2020 has been set aside. These claims were withdrawn accordingly.

The hearing continued based on the Tenant's Application to cancel the Two Month Notice. I note that Section 55 of the *Residential Tenancy Act (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 is compliant with the *Act*.

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 January 18, 2020, pursuant to Section 49 of the *Act*?
2. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?
3. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 1, 2016. Currently, the Tenant is required to pay rent in the amount of \$1,400.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00, however, the T.B. could not confirm this during the hearing. T.B. stated that the Landlord purchased the rental property on January 10, 2020.

T.B. stated that she served the Two Month Notice to the Tenant in person on January 18, 2020. The Tenant confirmed receipt. 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)."

T.B. stated that the Landlord is comprised of two brothers who purchased the rental property on January 10, 2020. T.B. stated that the Landlords would like to conduct some renovation to the rental property in preparation for the Landlords' sister, A.W., to occupy the rental property. During the hearing, T.B. confirmed that A.W. was not an owner of the rental property but is the sister of the Landlords. As such, the Landlords are seeking to obtain vacant possession of the rental property effective March 31, 2020, as indicated on the Two Month Notice.

In response, the Tenant stated that he had verbally agreed to enter a five-year fixed term tenancy with the previous Landlord, therefore, the new Landlord is not able to end the tenancy early. The Tenant stated that he was not provided with notice that the rental property had sold. The Tenant also stated that he is unaware who the new Landlords are. As such, the Tenant is seeking the Two Month Notice be cancelled.

If successful, the Landlords are seeking the return of the filing fee.

Analysis

Based on the 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.

According to the Residential Tenancy Branch Policy Guideline (the "Policy Guideline") 2A;

"Close family member" means the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. **A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.**

The Landlord served the Tenant in person with the Two Month Notice on January 18, 2020 with an effective vacancy date of March 31, 2020. The Tenant confirmed having received the notice on January 18, 2020. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

T.B. testified during the hearing that the Landlords, who are two brothers, intend to have their sister, A.W., occupy the rental property. T.B. confirmed during the hearing that A.W. is not the owner but is the sister of the owners.

In this case, I find that a Landlord cannot end a tenancy under Section 49 so that their sister can occupy the rental unit, as a sister of the Landlords does not meet the definition of a “close family member” according the Policy Guideline 2A.

In light of the above, I cancel the Two Month Notice dated January 18, 2020. I order the tenancy to continue until ended in accordance with the Act.

As the Landlord was not successful with their Application, I find that they are not entitled to the return of the filling fee.

Conclusion

The Tenant’s application is successful. The Two Month Notice issued by the Landlords dated January 18, 2020 is cancelled. 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: March 12, 2020

Residential Tenancy Branch