



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT CNL

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 (the "2 Month Notice") pursuant to section 49; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the respective materials and based on their testimonies I find that they were each served with all documents in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The parties agree on the following facts. This tenancy originally began approximately 14 years ago in 2006. There were originally two landlords, siblings who managed the tenancy. One brother BC passed away in February 2019 and the surviving brother became the sole landlord.

The tenant has periodically signed tenancy agreements with the landlord setting the amount of the monthly rent and other details of the tenancy. The most recent written tenancy agreement was signed on September 1, 2017 by the tenant MGL and the deceased landlord BC. The respondent landlord testified that they and the deceased BC were co-landlords with authority to enter into an agreement.

A 2 Month Notice dated December 30, 2019 was issued on the tenants on that date. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or a close family member. The landlord testified that they intend for the property to be occupied by their niece, the daughter of the deceased BC.

Analysis

Section 49(1) defines a close family member as:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

Section 49(8) provides that a tenant who receives a Notice to End Tenancy for Landlord's Use may dispute the notice within 15 days after the date the tenant receives the notice.

In the present case the parties confirm that the tenant received the 2 Month Notice on December 30, 2019 and the tenants filed their application to dispute on January 14, 2020. As such, I find that the tenants were within the timeline provided under the Act to dispute the notice.

When a tenant disputes a notice to end a tenancy for landlord's use, the landlord has the burden of proof on a balance of probabilities. The landlord testified that the person who will be occupying the rental unit is their niece, the daughter of the deceased landlord BC. The landlord did not provide documentary evidence in support of their position, no information was provided on where the niece would be moving from nor was there documentary materials in support of the submission that the landlord BC had passed away.

If the landlord BC has passed away, they would no longer be a landlord and it would be their estate that would be landlord in their stead and place. Alternately, the respondent

landlord would have simply become the sole landlord of the rental property. In either event the daughter of the deceased BC does not meet the definition of a close family member as set out in the Act.

Furthermore, the landlord provided little information on their reasons for issuing the 2 Month Notice. No details were provided regarding why this rental unit is required, where the person intending to move in is relocating from and no documentary evidence was submitted at all.

For these reasons I allow the tenant's application and cancel the 2 Month Notice. This tenancy continues until ended in accordance with the Act.

As the tenants were successful in their application they may recover their filing fee from the landlord by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The 2 Month Notice of December 30 2019 is cancelled and of no further force or effect.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 13, 2020

Residential Tenancy Branch