



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice).

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background & Evidence

The landlord served the tenant with a Two Month Notice on January 16, 2020 with an effective date of March 31, 2020. The Two Month Notice was issued on the following ground(s):

- A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant is disputing the Two Month Notice on the grounds that it was not issued in good faith.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Pursuant to section 49(4) of the Act, a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Under this section, a "**family corporation**" means a corporation in which all the voting shares are owned by:

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

The landlord failed to submit any documentary evidence or provide the tenant with any information in support of issuing the Two Month Notice including; the name of the individual who intends to occupy the rental unit and whether or not this corporation is a "family corporation" as defined above. By failing to provide this information, the landlord has prejudiced the tenant's ability to properly respond to this Notice and failed to demonstrate that the landlord is a "family corporation".

Accordingly, the Two Month Notice to End Tenancy dated January 16, 2020, is hereby cancelled and of no force or effect.

Conclusion

I allow the tenant's application to cancel the landlord's Two Month Notice, dated January 16, 2020, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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: April 03, 2020

Residential Tenancy Branch