



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 the landlord's Two Month Notice to End Tenancy for Landlord's use ("the Notice") issued pursuant to section 49(3).

The applicant (tenant) called into this teleconference at the date and time set for the hearing of this matter and were given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Although I waited until 1:44 P.M. to enable the respondent (landlord) to connect with this teleconference hearing scheduled for 1:30 P.M, the respondent did not attend. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only persons who had called into this teleconference.

The tenant affirmed she served the Notice of Hearing (the Material) by registered mail sent on March 31, 2020 (the tracking number is on the cover page of this decision). I find the landlord was served in accordance with section 89(1)(c) of the Act. The landlord is deemed to have received the Material on April 05, 2020, in accordance with section 90 (a) of the Act.

Issue to be Decided

- Is the tenant entitled to cancellation of the Notice?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below.

The tenant affirmed the tenancy started on May 01, 2015, rent is currently \$650.00 monthly, due on the first day of the month. The landlord still holds a \$325.00 security deposit and a \$325.00 pet damage deposit collected at the outset of the tenancy. The tenant continues to reside at the rental property.

The tenant affirmed the Notice was served by registered mail received on March 17, 2020. The effective date of the Notice is May 31, 2020.

A copy of the Notice was provided. The Notice indicates a "copy of the purchaser's written request for the seller to issue and eviction notice attached".

The tenant affirmed the landlord is not trying to sell the rental unit. There was no 'for sale' sign in the rental unit.

Analysis

Section 49(8) allows the tenant to challenge the Notice within 15 days. As the Notice was served on March 17, 2020 and the tenant filed on March 26, 2020 the tenant filed this application in time.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid. Furthermore, Policy Guideline 2A states that when issuing a notice under section 49 of the Act the landlord must demonstrate there is not an ulterior motive for ending the tenancy:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

The landlord did not attend the hearing and did not provide any evidence. Pursuant to Rule of Procedure 6.6 the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy.

The Notice is therefore cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the *Act*.

Conclusion

The Two Month Notice to End Tenancy for Landlord's use is cancelled and of no force or effect.

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: May 21, 2020

Residential Tenancy Branch