



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the Two Month Notice); and
- An order for the Landlord to comply with the Act, regulation or tenancy agreement.

I note that section 55 of the Act requires that when a tenant submits an Application 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 section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, two witnesses for the Tenant (R.S. and S.F.), the Landlord and the Landlord’s witness H.B., all of who provided affirmed testimony. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and both parties acknowledged receipt of each other’s documentary evidence. As a result, the hearing proceeded as scheduled and I accepted the documentary evidence before me from both parties for consideration in this matter. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #4

Although M.B. was listed as the landlord in the Application, a corporation (A.C.) is listed as the landlord in the tenancy agreement. During the hearing M.B. stated that A.C. is a family corporation and that they are one of only two owners. As a result, I will refer to the respondent M.B. as the Landlord throughout this decision.

Preliminary Matter #2

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a Two Month Notice I find that the priority claim relates to whether the tenancy will continue or end. As a result, I exercise my discretion to dismiss the Tenant's Application seeking an order for the Landlord to comply with the Act, regulation, or tenancy agreement, with leave to reapply.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the Two Month Notice.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Preliminary Matter #4

All witnesses were excluded from the proceedings except when providing testimony or answering questions during cross-examination.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

If the Two Month Notice is upheld, is the Landlord entitled to an Order of Possession pursuant to section 55 (1) of the Act?

Background and Evidence

The tenancy agreement in the documentary evidence before me lists the name of a corporation as the Landlord (A.C.), states that the tenancy began on August 1, 2005, that rent in the amount of \$400.00 is due on the first day of each month and that a security deposit in the amount of \$200.00 was paid. In the hearing the parties confirmed that these are the correct terms for the tenancy agreement and that rent is currently \$461.25.

The Landlord stated that A.C. is a family corporation, that they and their sibling M.B. are the only voting shareholders and that they and M.B. are both directors of the company. The Landlord submitted sworn affidavits by themselves and M.B. in support of this testimony.

The Landlord stated that the Two Month Notice was sent to the Tenant by Registered Mail on July 13, 2020, as they, their spouse and their adult child both reside in the basement of M.B.'s home and are required to move out as M.B.'s child is getting married and now requires use of the basement for their own residence. As a result, the Landlord stated that their child M.H. requires the use of the Tenant's rental unit for themselves, as it is the only bachelor suite in the apartment building.

H.B. submitted a signed affidavit and also appeared in the hearing to provide testimony for my consideration. During the hearing H.B. testified that they currently reside in M.B.'s basement with their parents, that they are required to move so that M.B.'s child and spouse may occupy the basement suite in M.B.'s home, and that they need to move into the Tenant's rental unit as they have been unsuccessful securing alternate

accommodation due to their limited budget and the Tenant's rental unit is the only bachelor suite in the apartment building.

The Two Month Notice in the documentary evidence before me is signed and dated July 12, 2020, has an effective vacancy date of September 30, 2020, and states that the Two Month Notice has been served because the landlord is a family corporation and 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 acknowledged receipt of the Two Month Notice by Registered Mail on July 21, 2020, and Registered Mail tracking information shows that it was sent July 13, 2020, and delivered July 20, 2020. The Tenant and their witnesses stated that the Two Month Notice has been served in bad faith and that the Landlord is simply seeking to end the tenancy. The Witness R.S. stated that they were witness to a telephone conversation in May of 2018 wherein the Landlord agreed to continue the tenancy until the Tenant could find alternate accommodation and the witness S.F. stated that both they and the Tenant have been served Two Month Notice's as they refuse to pay the Landlord unlawful rent increases.

The Tenant and the witness S.F. stated that two units in the building, unit 104 and 105, were vacant in March, April, May and June of this year, and that the Landlord waited until those units were re-rented to serve both of them Two Month Notice's. The Tenant and the witness S.F. therefore argued that this is further evidence that the Landlord is simply seeking to end the tenancy as they and their child could easily have moved into one of the previously vacant units if it had simply been about needing a place to move into. The Tenant also stated that another previous occupant of the building was served a Two Month Notice in March of 2020, that the occupant of that unit committed suicide, and that instead of occupying the rental unit, the Landlord had it renovated and re-rented.

The Landlord denied making any requests for unlawful rent increases stating that as they have only increased the Tenant's rent twice during the entire tenancy, this is clearly not about the amount of rent being paid by the Tenant. The Landlord denied that a Two Month Notice was previously served to another occupant of the building in March of 2020, instead stating that the family of that occupant had served a notice to end tenancy as the occupant had suffered a heart attack, and as a result, they were entitled to renovate and re-rent the unit. The Landlord also reiterated that their adult child requires the Tenant's rental unit for their own occupancy.

Analysis

Although section 90 (a) of the Act states that documents sent by mail are deemed received five days later, unless earlier received, the tracking information for the Registered Mail sent to the Tenant containing the Two Month Notice indicates that it was not delivered until July 20, 2020, due to a processing delay. In the hearing the Tenant stated that it was not received by them until July 21, 2020. Based on the tracking information, I do not find it reasonable to deem the Registered Mail received on July 18, 2020, in accordance with section 90 (a) of the Act, as this is two days prior to delivery. As a result, I accept that the Two Month Notice was received by the Tenant on July 21, 2020, one day after Canada Post shows that it was delivered.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the landlord bears the burden to prove that a notice to end tenancy valid.

Although the Landlord stated that A.C., the named corporation listed as the landlord on the tenancy agreement, is a family corporation and that only they and their sibling M.B. hold voting shares, no documentary evidence was submitted to support this claim, other than sworn affidavits from the Landlord and M.B. themselves. While I find that the Landlords testimony and the sworn affidavits are *some* evidence in support of this position, I do not find them sufficient to satisfy me, on a balance of probabilities, that A.C. is in fact a family corporation in which the Landlord holds voting shares, especially since more substantial evidentiary proof could reasonably have been expected in this circumstance, such as purchase of sale documents, land title registry documentation and/or incorporation documents showing who the voting shareholders are.

Based on the above, I am therefore not satisfied based on the documentary evidence and testimony before me for consideration that A.C. is a family corporation as defined by section 49 of the Act. As a result, I order that the Two Month Notice dated July 12, 2020, is cancelled and that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the Act.

Conclusion

I order that the Two Month Notice dated July 12, 2020, is cancelled and that the tenancy continue in full force and effect until it is ended by one of the parties 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: August 31, 2020

Residential Tenancy Branch