



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

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 of Property ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice on July 28, 2020. The tenanted testified at the beginning of the hearing that the landlord had submitted a copy of a different notice in their evidentiary materials, which the landlord confirmed was a duplicate. I find that although the 2 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*, I confirmed with both parties that the copy that the landlord provided was not identical to the original 2 Month Notice, and only the original 2 Month Notice served on the tenant would be considered for the purposes of this hearing.

Issues to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on December 1, 1998, with monthly rent currently set at \$1,108.08, payable on the first of every month. The landlord collected a security deposit in the amount of \$325.00, which the landlord still holds.

The landlord served the 2 Month Notice, with an effective move-out date of September 30, 2020 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. The landlord testified that the home was owned by three parties: the landlord, landlord's mother, and landlord's brother. The landlord testified that his niece, his brother's daughter, will be residing in the rental unit. The landlord responded to the tenant's concerns brought up on the application. The landlord testified that the landlord had no ulterior motive in ending this tenancy, and that the landlord selected the main floor suite as it was the nicer suite in the home. The landlord testified that the family wanted to assist the niece by allowing her to move in, and that was the only reason they were ending this tenancy.

The tenant testified that he had been a tenant at this residence for over 20 years, and he was never informed that the landlord's brother was a landlord. The tenant also feels that the primary reason for why the landlord was attempting to end this tenancy was due to the deteriorating relationship between the parties.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Policy Guideline #2A provides some clarification as to the definition of “close family member” in relation to section 49 of the *Act*.

“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.

Although the landlord’s testimony is that his brother is an owner and landlord for this tenancy, and that his daughter would be moving into the rental unit, the tenant testified that he had never known the landlord’s brother to be a landlord. In light of disputed testimony before me, I am not satisfied that the landlord had provided sufficient evidence to support that his brother is in fact a landlord. As a niece or grandchild does not qualify as a “close family member” under the *Act*, I find that that the 2 Month Notice to be invalid.

Accordingly, I allow the tenant’s application to cancel the 2 Month Notice. The landlord’s 2 Month Notice, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenant is entitled to recovery of the filing fee.

Conclusion

The tenant’s application to cancel the landlord’s 2 Month Notice is allowed. The landlord’s 2 Month Notice, served on July 28, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 28, 2020

Residential Tenancy Branch