



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DIETRICH ELECTRIC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FFT

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 25, 2020 (2 Month Notice), and to recover the cost of the filing fee.

The tenant, a support person for the tenant, JR (support) and the owner/operator of the corporate landlord limited company, SD (owner) attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing. The parties were also provided an overview of the hearing process. I have only considered the evidence that was served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

Issue to be Decided

- Should the 2 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 1, 2016. The parties agreed that currently monthly rent is \$1,082.00 per month and is due on the first day of each month.

A copy of the 2 Month Notice was submitted in evidence. The 2 Month Notice is dated November 25, 2020; and although the first box/reason is not checked off, the owner confirmed it was their intent to fill out the first box/reason, which states the following reason:

☐ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicated which close family member will occupy the unit.

✓ The landlord or the landlord's spouse

The owner did not select the second box/reason that relates to a family corporation, which is the reason on the 2 Month Notice that reads:

☐ 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 owner confirmed that they are the owner/operator of the corporate landlord limited company named as landlord on the tenancy agreement.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice issued by landlord – Section 52 of the Act applies in this case and states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, **state the grounds for ending the tenancy**,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) **when given by a landlord, be in the approved form.**

[emphasis added]

In the matter before me, I find the owner filled out the incorrect reason on the 2 Month Notice as the landlord is a corporate landlord operating as a limited company. Therefore, I find section 49(3) applies and states:

49(3)A landlord who is an individual 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.

In addition, section 49 of the Act defines “close family member” and “family corporation” respectively as follows:

"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;

"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;

Given the above, I find that due to the landlord being a limited corporate company, they are not an individual under the Act, and **I cancel** the 2 Month Notice as a result. I find the 2 Month Notice is of **no force or effect**. The landlord is at liberty to issue a new 2 Month Notice with the correct reason selected.

I ORDER the tenancy to continue until ended in accordance with the Act.

I find I do not need to address the tenant's good faith argument as it is moot given that the 2 Month Notice has been cancelled due to the incorrect reason being selected by the landlord, which is a corporate limited company.

As the tenant's application was successful, I grant the tenant the recovery of the \$100.00 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

Conclusion

The 2 Month Notice dated November 25, 2020 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The tenant has been authorized a one-time rent reduction in the amount of \$100.00 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 2, 2021

Residential Tenancy Branch