



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord’s Witness gave testimony under oath.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: a tenancy agreement was signed by the Parties for a tenancy start date of July 1, 2020. Rent of \$2,400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,200.00 as a security deposit. On March 11, 2021 the Landlord served the Tenant with a two-month notice to end tenancy for landlord’s use (the “Notice”). The reason stated on the Notice is that the Landlord or the Landlord’s spouse will occupy the unit.

The Tenant states that the tenancy is a fixed term to end July 1, 2024. The Tenant states that at the time of signing the tenancy agreement the Landlord had its own signed copy with the same fixed term. The Tenant states that prior to signing the Parties discussed a longer-term lease with the Landlord for terms of 1 year or more and that they settled on the four-year term. The Tenant states that during the discussions they spoke about the location of the unit to the various schools leading up to a high school for the Tenant's children. The Tenant provides a copy of the tenancy agreement. The Tenant argues that the Landlord cannot end the tenancy until the end of the fixed term and that for this reason the Notice is not valid.

The Landlord's Witness states that the Landlord is their mother and that prior to the tenancy the Landlord occupied the upper unit and a lower suite in a house with a third suite. The Witness states that the Landlord moved in with the Witness after the upper unit was rented to the Tenant. The Witness states that a couple of weeks later the Witness asked to see the tenancy agreement as the Witness and Landlord were not getting along. The Witness states that the tenancy agreement indicated that the tenancy was for a term ending on July 1, 2021. The Witness states that there was only one Tenant named on the tenancy agreement. The Witness states that they do not get along with the Landlord and that the last year has been difficult. The Witness states that the Landlord does not have a copy of the tenancy agreement as it was left in the cupboards in the lower suite and it has since gone missing.

The Landlord states that although the signature on the tenancy agreement is the Landlord's signature the end date was for July 2021. The Landlord states that although the Tenant asked for a 3 year lease the Landlord only agreed to one year and that the Tenants would then have to move out of the unit. The Landlord confirms that two copies of the tenancy agreement were signed but that the Landlord is unable to locate its copy. The Landlord states that they want to return to the house.

The Tenant states that the lower suite has no separate entrance and can only be accessed through the upper unit occupied by the Tenant. The Tenant states that the lower suite was not included in the tenancy agreement and that the Tenants have no access to this suite. The Tenant states that the Landlord informed the Tenants a few days after the Landlord moved in with the Witness that they had a fight.

Analysis

Section 49(3) of the Act provides that 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. Section 49(2)(a) of the Act provides that a landlord may end a tenancy for a purpose referred to in subsection (3) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

The Witness was clear that they wanted the Landlord to move out of their home and back into the unit. The Witness was clear that the Witness and Landlord do not get along. With this background the Witness evidence of a different fixed term of the tenancy agreement seems rather convenient. The Witness evidence of only one Tenant being named on the Landlord's copy of the tenancy agreement is not consistent with the tenancy agreement provided by the Tenant as two Tenants are named. The evidence that the Landlord's copy of the tenancy agreement was left in the lower suite is not consistent with the Witness evidence that they had a copy of the tenancy agreement a few weeks after it was signed. The Landlord's evidence that after the end of the one-year term the Tenant was required to move out of the unit is neither consistent with the Act nor a term set out on the Tenant's copy of the tenancy agreement. For these reasons I prefer the Tenant's supported evidence and find on a balance of probabilities

that the tenancy agreement fixed term does not end until July 1, 2024 as stated on the signed and written tenancy agreement. Given this date of the fixed term I find that the Landlord is unable to end the tenancy for landlord's use until July 1, 2024. As the Notice sets out an earlier date than the fixed term, I find that the Notice is not valid. The Tenant is entitled to its cancellation and the tenancy continues.

As the Tenant has been successful with its claim, I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 09, 2021

Residential Tenancy Branch