



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, DRI, 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;
2. An Order disputing a rent increase - Section 43;
3. An Order for the Landlord’s compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s supported evidence that the Landlord was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on April 22, 2021 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Hearing package on April 27, 2021. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

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

Has the Tenant been given a valid or effective rent increase?

Is the Tenant entitled to an order for the Landlord’s compliance?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in December 2017. No security deposit was collected by the Landlord. In a mutual agreement signed by the Parties and dated August 1, 2020 the monthly rent of \$600.00 was increased to \$700.00 with no additional rent increase allowed for two years from that date. On April 1, 2021 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use (the "Notice"). The Notice sets out an effective date of June 1, 2021 and gives as the reason that the Landlord or the Landlord's spouse will occupy the unit. The Tenant does not believe that the Landlord will occupy the unit as stated on the Notice as the house containing the rental unit is currently listed for sale. The Landlord told the Tenant that the rent would increase however the Landlord has not served the Tenant with a notice of rent increase on an approved form and the Tenant has not paid any rent increase.

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. Given the Tenant's undisputed evidence that the unit is for sale I find on a balance of probabilities that the Landlord has not issued the Notice in good faith as the Landlord will not be occupying the unit. The Notice is therefore cancelled, and the tenancy continues.

As the Landlord has not served the Tenant with a notice of rent increase on an approved form and noting that rents may not currently be increased even on an approved form, I find that the Tenant has not been given an effective or valid rent increase. I therefore dismiss the Tenant's claims to dispute the rent increase and for an order for the Landlord's compliance in relation to a rent increase. The Tenant remains at liberty to make these claims again should the Landlord increase the rent without

adhering to the Act or any emergency orders that may still be in effect in relation to rent increases.

As the Tenant's claim to cancel the Notice has been successful, 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 the claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

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: August 13, 2021

Residential Tenancy Branch