



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 as a result of the Tenant's Application for Dispute Resolution, made on February 14, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated January 31, 2022;
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agents attended the hearing at the appointed date and time and provided affirmed testimony. At the start of the hearing, the parties confirmed service and receipt of their respective Application package and documentary evidence. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 71 of the *Act*?

3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 1, 2013. The Tenant currently pays rent in the amount of \$1,065.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$447.50 which the Landlord continues to hold.

The Landlord's Agents testified that they served the Tenant with the Two Month Notice on January 31, 2022 by email, and again in person on February 1, 2022. The Tenant confirmed having received the Two Month Notice in person on February 1, 2022. The Two Month Notice is dated January 31, 2022 and has an effective date of April 30, 2022. The Two Month Notice names a Corporate Landlord. The Landlord's Agent stated that two families own the Corporation which owns the rental property. The Landlord's Agents stated that one of the owners of the corporation wishes to have their daughter occupy the rental unit. For this reason, the Landlord's Agents indicated on page 2 of the Two Month Notice:

"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)."

The Tenant responded by stating that the Landlord is a Corporate Landlord, and therefore, the Landlord's Agents failed to select the appropriate option listed on page 2 of the Two Month Notice which reads:

"The Landlord is a family corporation and a person owner voting shares in the corporation, or a close family member of that person intends in good faith to occupy the rental unit."

The Tenant stated that the Corporation does not meet the definition of a Landlord and therefore, the Two Month Notice should be set aside.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Landlord's notice: landlord's use of property

49 (1) In this section:

"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;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

The Landlord's Agents served the Tenant in person with the Two Month Notice February 1, 2022, with an effective vacancy date of April 30, 2022. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on February 1, 2022 and filed the Application on February 14, 2022. Therefore, the Tenant is within the 15 day time limit under the *Act*.

In this case, I accept that the Landlord is a corporation which is owned by two couples. I find that the Two Month Notice names a corporate Landlord, however, on page 2 of the Two Month Notice, indicates that 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 souse).”*

I find for the purposes of Section 49 of the Act, a Landlord is defined as an individual. The Landlord’s Agents did not indicate an individual as being the Landlord, rather, they named the Corporation. As such, the Landlord’s Agents would have been required to select *“The Landlord is a family corporation and a person owner voting shares in the corporation, or a close family member of that person intends in good faith to occupy the rental unit.”*

I find that the Landlord’s Agents have either improperly named the Landlord on the Two Month Notice, or they have selected the incorrect reason for ending the tenancy. In light of the above, I cancel the Two Month Notice dated January 31, 2022. I order that the tenancy continue until it is ended in accordance with the *Act*.

The Landlord’s Agents are at liberty to re-serve a new Two Month Notice. As the Tenant’s Application was successful, I find that they are entitled to recover the \$100.00 filing fee which can be deducted from one (1) future rent payment.

Conclusion

The Tenant’s Application seeking cancellation of the Two Month Notice dated January 31, 2022 is successful. The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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: May 25, 2022

Residential Tenancy Branch