



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 29, 2022 (2 Month Notice).

The tenant's mother/agent, LH (agent) attended the teleconference hearing and was affirmed. The agent gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The hearing process was explained to the agent and an opportunity to ask questions was provided to both parties.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated May 26, 2022 (Notice of Hearing), application and documentary evidence were considered. The agent testified that her daughter, the tenant, served the landlord within the required timelines both in person and via email so that the landlord would be aware of the hearing held this date, September 20, 2022 at 11:00 a.m. Pacific Time.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The agent testified that it is their understanding that the landlord issued the 2 Month Notice in error and had no plans to enforce it or seek an order of possession. The tenant remains in the rental unit.

Issue to be Decided

- Should the 2 Month Notice be cancelled?

Background and Evidence

There is no dispute that the landlord served the tenant with a 2 Month Notice. The 2 Month Notice is dated April 29, 2022.

The reason listed on 2 Month Notice states:

The tenant no longer qualifies for the subsidized rental unit.

The effective vacancy date listed on the 2 Month Notice is June 30, 2022. The tenant filed their application on May 13, 2022, which is the last possible date for the tenant to dispute the 2 Month Notice pursuant to section 49.1(5) of the Act.

The landlord failed to attend the hearing to speak to the merits of the 2 Month Notice.

Analysis

Based on the above, and on a balance of probabilities, I find as follows.

Firstly, I find the tenant filed their application on time to dispute the 2 Month Notice as indicated above. When tenant disputes a 2 Month Notice on time, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

As the landlord failed to attend the hearing to present the merits of the 2 Month Notice, I find the 2 Month Notice is not valid due to insufficient evidence from the landlord. Therefore, **I cancel** the 2 Month Notice dated April 29, 2022.

I ORDER the tenancy to continue until ended in accordance with the Act, pursuant to section 62(3) of the Act.

As the filing fee was waived, it is not granted.

Conclusion

The tenant's application is successful.

The 2 Month Notice is cancelled and is of no force of effect.

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

This decision will be emailed to both parties.

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: September 20, 2022

Residential Tenancy Branch