



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended with the advocate AK ("the tenant"). The landlords attended with the advocate TP ("the landlord"). Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The parties provided their email addresses for the delivery of the Decision.

The parties stated they were not recording the hearing.

Preliminary Issue – Settlement

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice.

The parties spent considerable time discussing possible settlement. They did not reach agreement.

Accordingly, the hearing continued.

Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord.

Section 55 states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Two Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The hearing, scheduled for 1-hour, lasted 90 minutes. Each party submitted considerable disputed evidence. I do not refer to all the evidence in my Decision. While I

have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. Only admissible, relevant evidence is referenced that is material to the issues, my findings and my Decision.

Background of Tenancy

A copy of the tenancy agreement was submitted.

The parties agreed the tenancy began December 1, 2018, and monthly rent is \$1,600.00. A security deposit of \$800.00 was paid at the beginning of the tenancy which the landlord holds. The unit is the main floor of a house on the landlord's property which also contains other buildings. One other building on the property is occupied by two of the landlords, JSS and SKS, and contains a rented suite.

The parties agreed the landlord issued a Two Month Notice which was personally served on April 30, 2022.

The Notice indicated an effective move-out date of July 1, 2022. The reason for the issuance of the Notice is stated to be that the landlord or landlord's spouse intended to occupy the unit.

The tenant acknowledged service. The tenant filed an application to dispute the Notice within the 15-day period.

The landlord testified as follows. Landlord JSS and landlord SKS are spouses and own 99% of the property. Landlord GS owns 1% of the property and intends to move into the unit.

The landlord submitted a copy of the State of Title Certificate dated March 8, 2022 which stated JSS and SKS are the registered owners of "an undivided 99/100 interest as joint tenants" and GS is the registered owner of "an undivided 1/100 interest".

The tenant asserted the Notice is void as GS is not a landlord as defined in section 49. The tenant requested the Notice be vacated. The landlord requested an Order of Possession.

Analysis

Section 49(3) states:

(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.

Section 49 (1) states:

"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

The landlord testified the landlord GS, who intends to move into the unit, hold a 1% interest in the property. As stated, the landlord submitted a copy of the Certificate of Title.

I accept the landlord's evidence. I find the landlord GS who intends to occupy the unit holds less than ½ of the full reversionary interest as required under section 49(1).

I therefore find the Two Month Notice does not comply with the definition of "landlord" under the Act.

I cancel the Two Month Notice and direct that the tenancy shall continue until it is ended in compliance with the Act and agreement.

As the tenant has been successful in this application, I award the tenant reimbursement of the filing of \$100.00 which she may deduct from rent on a one-time basis.

Conclusion

I cancel the Two Month Notice and direct that the tenancy shall continue until it is ended in compliance with the Act and agreement.

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: September 23, 2022

Residential Tenancy Branch