



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened in response to two joined applications by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties all confirmed receipt of each other’s evidence. The Parties confirmed that none of them are using a recording device for the hearing.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notices to end tenancy?

Is Tenant LK entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy of unit 202 started on November 1, 2005. Rent of \$893.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$347.50 and a pet deposit of \$440.00. The tenancy of unit 201 started on January 1, 2015. Rent of \$1,102.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$490.00 as a security deposit. The Landlord gave each Tenant a two month notice to end tenancy

for landlord's use dated May 31, 2022 (the "Notices"). Each of the Notices names a corporation as the Landlord and sets out that the landlord or close family member of the landlord will occupy the unit.

The Landlord, represented by an agent, states that the units are contained in a building that it owned by a corporation purchased two years ago. The Landlord states that the corporation is wholly owned by the person "LT" who intends to occupy the unit. The Landlord did not provide any evidence of the ownership or voting shares of the corporation.

The Tenant submits that the Notice is not valid as it does not select the reason that the corporation is a family corporation and that and that the person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

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. As the rental unit is not owned by an individual, I find that only the corporation could end the tenancy as provided below.

Section 49(4) of the Act provides that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. As the Landlord did not indicate as the reason for the Notices that the person who owns the voting shares of the corporation will occupy the unit and did not provide any supporting evidence of the ownership and voting shares of the corporation I find that the Landlord has not provided sufficient evidence to substantiate that the corporation is entitled to end the tenancy or that the person who intended to reside in the unit was entitled to occupy the unit under the Act. The Notices are therefore cancelled, and the tenancy

continues. As both applications have been successful, I find that the Tenant in unit 202 is entitled to recovery of the \$100.00 filing fee and this Tenant may deduct this amount from future rents payable in full satisfaction of this claim.

Conclusion

The Notices are cancelled, and the tenancies continue.

I grant Tenant LK 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: October 31, 2022

Residential Tenancy Branch