



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, LAT, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 5, 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 July 1, 2022;
- an order authorizing the Tenant to change the locks; and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenant's Application and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Landlord confirmed that they did not submit any documentary evidence in response to the Application.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Two Month Notice. As such, I find that the Tenant's claim for authorization to change the locks is dismissed with leave to reapply.

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 72 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 September 1, 2016. Currently, the Tenant is required to pay rent in the amount of \$900.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlord stated that he served the Two Month Notice to the Tenant in person on July 1, 2022. The Tenant confirmed receipt. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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 Landlord indicated that his spouse's brother intends to occupy the rental unit. The Landlord indicated on the Two Month Notice "*(my brother)*". The Tenant stated that the Landlord is not permitted to end the tenancy for their brother to occupy the rental unit as they do not meet the definition of a "close family member" pursuant to the Two Month Notice. If successful, the Tenant is seeking the return of the filing fee.

Analysis

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

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

According to the Residential Tenancy Branch Policy Guideline (the "Policy Guideline") 2A;

"Close family member" means the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. **A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.**

The Landlord served the Tenant in person with the Two Month Notice on July 1, 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.

During the hearing, the Landlord confirmed that he is seeking to end the tenancy in order for his spouse's brother to occupy the rental unit.

In this case, I find that a Landlord cannot end a tenancy under Section 49 so that their brother can occupy the rental unit, as a brother of the Landlord or their spouse does not meet the definition of a "close family member" according the Policy Guideline 2A.

In light of the above, I cancel the Two Month Notice dated July 1, 2022. I order the tenancy to continue until ended in accordance with the Act. As the Tenant was successful with their Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. I order that the Tenant deduct \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The Two Month Notice issued by the Landlord dated July 1, 2022 is cancelled. The tenancy will continue until ended in accordance

with the Act. 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: November 22, 2022

Residential Tenancy Branch