



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-MT, OLC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant CM attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified she sent the Notice of Dispute Resolution Proceedings to the landlord via registered mail on August 26, 2022 and provided a tracking number, recorded on the cover page of this decision. The landlord is deemed served with the notice the fifth day after it was sent via registered mail, on August 31st pursuant to sections 89 and 90 of the Act.

Preliminary Issue

The tenant testified that she and the co-tenant vacated the rental unit on September 1, 2022 in accordance with the 2 Month Notice to End Tenancy for Landlord’s Use that

was served upon them. The landlord has since re-rented the unit at a higher rate of rent when the landlord's mother did not occupy the rental unit.

The tenant testified that she seeks compensation from the landlord for not using the rental unit for the purpose stated in the notice to end tenancy for at least 6 months duration. The tenant does not seek to cancel the landlord's notice to end tenancy and remain occupying the rental unit.

Analysis

The application before me is for an order to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use and remain the occupant of the rental unit. Additionally, the tenants seek an order for the landlord to comply with the Act. As this tenancy has ended, I cannot grant either of the orders sought and I dismiss them without leave to reapply. The filing fee will not be recovered as the primary application was dismissed.

Rule 6.2 states that the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. I find it would be procedurally unfair to allow the tenant to amend her application seeking an order for compensation and I decline to allow the tenant to amend her application. The tenant is at liberty to file such an application should she choose to do so.

Conclusion

This application is dismissed without leave to reapply.

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: January 06, 2023

Residential Tenancy Branch