



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the application and evidence submissions on file. The tenant's application was amended to remove the tenant's spouse and children who are not named as tenants on the tenancy agreement.

The landlord as per the tenancy agreement is a corporation AHN Holdings Ltd.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee.

Background & Evidence

The landlord served the tenant with a Two Month Notice on January 18, 2023. The Two Month Notice was issued on the following ground(s):

- The landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Pursuant to section 49(4) of the Act, 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.

Under this section, a **"family corporation"** means a corporation in which all the voting shares are owned by:

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

As the landlord is a corporation, the landlord has issued the Two Month Notice on the incorrect ground and has also failed to submit any documents supporting that the corporation is a family corporation as defined above.

Accordingly, the Two Month Notice to End Tenancy dated January 18, 2023, is hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenant may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenant's application to cancel the landlord's Two Month Notice, dated January 18, 2023, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: March 02, 2023

Residential Tenancy Branch