



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the Two-Month Notice”).

SL (the “tenant”) appeared at the hearing. SL provided affirmed testimony that they served the landlord with the Notice of Dispute Resolution Proceeding and evidence package on November 26, 2022, by sending a copy by registered mail. In support of this, SL provided a receipt dated November 26, 2022, containing a Canada Post Tracking Number.

Based on the affirmed testimony and evidence of SL and based on sections 89 and 90 of the Act, I find that the required documents were served on the landlord on November 26, 2022, and are deemed to have been received by the landlord on December 1, 2022, the fifth day after they were sent by registered mail.

SL was given full opportunity under oath to be heard, to present evidence and to make submissions. SL confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11

The landlord did not appear at the hearing. The hearing proceeded in the landlord’s absence pursuant to Rule of Procedure 7.3.

Issue(s) to be Decided

Should the landlord’s Two Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified that the tenancy commenced on August 1, 2019, with the previous owner of the building. The landlord purchased the building in March 2022. Monthly rent is \$1,015.00 payable on the first of each month. The landlord collected a security deposit in the amount of \$500.00 from the tenant, which the landlord continues to hold in trust.

The tenant testified that they received the Two-Month Notice on November 4, 2022. The Two-Month Notice indicates it was issued because the landlord is a family corporation and 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. The tenant is seeking an order for cancellation of the Two Month Notice.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In most circumstances the onus is on the person making the application. However, in some situations the Arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on the above, in this case, the onus is on the landlord to prove on a balance of probabilities that the tenancy should be ended for the reason identified on the Two Month Notice.

However, the landlord did not appear at the hearing to make submissions or present evidence. On that basis, I find the landlord has not met the burden upon them to prove the reason that the tenancy should be ended. Therefore, I find in favour of the tenant and order that the Two Month Notice is cancelled and of no force or effect.

Conclusion

For the reasons outlined above, I grant the tenant's application for cancellation of the Two Month Notice. The tenancy will continue.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

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Dated: March 30, 2023

Residential Tenancy Branch