



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 49;
2. A Monetary Order for compensation for emergency repairs - Section 67;
3. An Order for the Landlord to comply - Section 62;
4. An Order disputing a rent increase - Section 43; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing to pursue their application. I therefore dismiss the Landlord’s application.

The Tenant served the Landlord with the Tenant’s application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on December 18, 2022. Given this evidence I accept that the Landlord was served in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I

find that the Landlord is deemed to have received the Hearing Package on December 23, 2022. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

The Tenant confirms that the Landlord has met all of the Tenant's claims other than the claim to cancel the notice to end tenancy. Given this confirmation I dismiss all the claims except the claim to cancel the notice to end tenancy.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on May 1, 2019. Rent of \$1,125.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. The Landlord gave the Tenant a notice to end tenancy for landlord's use dated November 29, 2022 (the "Notice"). The Notice sets out that the Landlord's child will occupy the unit. The Tenant does not believe that the Landlord's child, who is a daughter, will occupy the unit as the Landlord gave the Notice immediately after the Tenant raised an issue with the tenancy in relation to costs for emergency repairs to the toilet.

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. Given the undisputed evidence of the Tenant I find that the Tenant has substantiated that the Landlord does not have a good faith intention to occupy the unit as stated in the Notice. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

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: May 01, 2023

Residential Tenancy Branch