



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord.

The tenant, the landlord, who did not participate, and the landlord's agent/husband attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The agent confirmed that they received the tenant's application and evidence. The landlord did not file any evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

- Should the Notice be cancelled?

Background and Evidence

The tenant submitted that the tenancy began on June 1, 2019. Filed in evidence was a copy of the tenancy agreement.

The tenant requested cancellation of the 2 Month Notice. In their application, the tenant wrote the following:

Hi, I don't consider the landlord's decision to be in good faith, because before giving the notice, she verbally asked me to increase the rent in the amount of \$300, which I did not accept, so she decided to end tenancy! In addition, we are now in the middle of the school year and my son, who has autism, is in 4th grade in elementary school and is getting used to his teachers, and friends, and my daughter is in 12th grade in high school. Also, we are in the winter and not ready to move. Thanks.

The Notice filed in evidence by the tenant was on the standard RTB form used for the purpose of ending a tenancy when a landlord claims it is for use of the residential property.

The Notice was dated January 31, 2023, signed by the landlord and listed an effective move-out date of March 31, 2023. The reason listed on the Notice stated that 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 landlord on the written tenancy agreement and the 2 Month Notice is an individual name. The agent said their wife was the owner of the residential property.

After informing the agent that I found the landlord's Notice invalid as the incorrect reason was listed, the agent said they marked that reason because their family live in the house.

The agent later said that they want to move their business office to the basement, where the tenant lives because their office is upstairs and their mother is coming to live with them. The agent said that they did not want their mother to live in the basement.

After informing the landlord of my Decision, the agent said they would just issue another 2 Month Notice and choose as reason that their mother would live in the rental unit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

When a tenant disputes a Two Month Notice, the landlord has the onus to prove that the Notice is valid, was issued in good faith, and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled.

Section 49 (4) states 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.

The Act defines a family corporation as a corporation in which all the voting shares are owned by one individual or one individual plus one or more of that individuals' brother, sister, or close family members.

I have reviewed the Notice and I find the landlord submitted insufficient evidence to prove that the named landlord, an individual, is a family corporation. No documentary evidence was provided. As proof, I would expect a document with the name of the business to show a designation of "Limited", "Limitee", "Incorporated", "Incorporee", or "Corporation". In this case, it did not. The landlord on the written tenancy agreement and the owner is an individual owner.

For these reasons, I find the Two Month Notice is invalid under the Act due to insufficient evidence that the individual landlord was a family corporation. Therefore, I find it unnecessary to consider the landlord's good faith intention in issuing this Notice.

Conclusion

As a result of the above, I **order** that the Notice dated January 31, 2023 for an effective move-out date of March 31, 2023, is cancelled, and it is of no force or effect. The tenancy shall continue 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 08, 2023

Residential Tenancy Branch