



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NATURE GLEN DAIRY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FFT

Introduction

On July 8, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant confirmed that he served the Landlord the Notice of Hearing package by hand on July 10, 2019 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that he did not submit any evidence for consideration on this file.

The Landlord advised that he did not submit any evidence for consideration on this file either.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on or around September 1, 2012 and rent was currently established at \$850.00 per month, due on the first of each month. A security deposit of \$450.00 was paid. The Landlord "had no idea" of the details of the tenancy but concurred that these were likely accurate.

The Landlord advised that the Tenant was served the Notice by hand "maybe on June 7 or so" but he is not sure. The Tenant confirmed that he received this Notice on June 6, 2019. The Landlord mistakenly listed the dispute address on the Notice as his own address; however, the Tenant acknowledged that he understood that the Notice applied to the rental unit that he occupied. In addition, the Landlord did not date the Notice of when it was signed. The Landlord also mistakenly indicated that the effective date of the Notice was October 6, 2019, but he was advised that this would automatically self-correct to October 31, 2019 pursuant to Section 53 of the *Act*. The Landlord did not have a copy of the Notice in front of him, but the Tenant did. These details on the Notice were confirmed with the Tenant.

The reason the Landlord served the Notice is to “convert the rental unit for use by a caretaker, manager or superintendent of the residential property.”

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

As well, I find it important to note that a Landlord may end a tenancy for demolition, renovation, repair or conversion of the rental unit pursuant to Section 49 of the *Act* if any of the reasons cited in the Notice are valid. Section 49 of the *Act* reads in part as follows:

Landlord's notice: landlord's use of property

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

With respect to the Notice served to the Tenant on June 6, 2019, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. The Tenant confirmed that the Landlord did not include a date on the Notice of when it was signed.

Furthermore, in reviewing this Notice and the testimony with respect to why the Notice was served, the Landlord did not provide any evidence to substantiate he had all the necessary permits or approvals required by law or provide any evidence at all that he intended in good faith to use the property for the stated purpose.

When reviewing the totality of the evidence before me, I am not satisfied that the Landlord complied with Section 52 of the *Act* and filled out the Notice completely, to be considered a valid Notice. In addition to that, the Landlord did not provide any evidence to support the reason for service of the Notice. For these reasons, I am not satisfied of the validity of the Notice. Therefore, I find that the Notice of June 6, 2019 is of no force and effect.

As the Tenant was successful in his application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. As a result, he may withhold this amount from a future month's rent.

Conclusion

Based on the above, I hereby order that the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit of June 6, 2019 to be cancelled and of no force or effect. This tenancy continues until 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: September 5, 2019

Residential Tenancy Branch