



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants – CNL, FF

For the landlords – OPL, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek to cancel the Two Month Notice to End Tenancy and to recover their filing fee. The landlords seek an Order of Possession and to recover their filing fee.

I am satisfied that both Parties served the other with a copy of the Application and Notice of Hearing pursuant to s. 89 of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to cancel the two Month Notice to End Tenancy for landlords use of the property?
- Are the landlords entitled to an Order of Possession?

Background and Evidence

Both parties agree that this tenancy started on February 01, 2005. In June, 2010 the landlords purchased the property and became the landlords. Rent for this unit is \$695.00 and is due on the first of each month. The tenants paid a security deposit of \$350.00 on January 26, 2005.

The tenants testify that on June 30, 2010 the landlords gave them a typed notice to end tenancy. On August 14, 2010 the tenants informed the landlords that this was not a legal notice as it was not on the correct form. They state that on August 16, 2010 the landlords served them with the correct Two Month Notice to End Tenancy with an effective date of October 31, 2010. The tenants have provided a copy of this Notice which gives the reason to end the tenancy as the landlord or a close family member intend to occupy the rental unit.

The tenants dispute this as they state the landlord had given them conflicting information about the use of the property. The tenants state that at first the landlords told them they would be occupying the unit, then they told them they were going to use it for their business and during a third conversation they claim the landlords told them they had a permit to change it to commercial use. The tenants state they want assurances that the landlords do intend to occupy the rental unit and if not they seek to cancel the Two Month Notice.

The landlords testify that they will be operating their trucking business from the commercial unit downstairs and intend to occupy the tenants unit on a part time basis for one landlord and their daughter while he is working. The landlords state there are two rental units and they intend to renovate this into one unit for their own use.

The landlords state the tenants misunderstood their conversations about the permits as this referred to the commercial unit not the residential unit. The landlords seek an Order of Possession for October 31, 2010. They state the tenants have had compensation in the form of their rent for October due to the two month Notice as required under the Act.

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlords have provided evidence of their new business address being the downstairs commercial unit and a change of address for one of the landlords to start on November 15, 2010 and a copy of a letter sent to their customers giving them details of their business change of address to the downstairs unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants arguments that the reasons given on the Notice to End tenancy may be questionable the tenants have provided no evidence to show that the landlords do not intend to occupy the rental unit or use it for their personal use and not in connection with their business as a commercial property.

The evidence provided by the landlord supports the reason given on the Notice and consequently I find the tenants application to cancel the Two Month Notice is dismissed.

I find the Two Month Notice to End Tenancy dated August 16, 2010 is valid and lawful and the landlords are entitled to an Order of Possession to take effect on the effective date of the Notice pursuant to section 55 of the Act.

As the tenants have been unsuccessful with their application they must bear the cost of filing their own application.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application pursuant to section 72(1) of the *Act*. I order that the landlord retain this amount from the security deposit and interest of \$362.38 leaving a balance \$312.38 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

The Tenant's application is dismissed. The Two Month Notice to End Tenancy will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on October 31, 2010. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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: October 08, 2010.

Dispute Resolution Officer