

## **DECISION**

Dispute Codes      CNL, MNDC, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants confirmed that the landlords did post the 2 Month Notice on their door on May 27, 2011. The landlords confirmed that they received a copy of the tenants' dispute resolution hearing package given to their building superintendent by the tenants early in June 2011. I am satisfied that these documents and the parties' evidence packages were exchanged with one another in accordance with the *Act*.

At the hearing, the landlords confirmed that they are still intending to move into the tenants' rental suite when their home sells and asked for an Order of Possession to take effect by July 31, 2011. The tenants confirmed that their application for a monetary award was for one month's rent if the landlords were successful in ending this tenancy on the basis of the 2 Month Notice.

### Issues(s) to be Decided

Should the landlords' notice to end tenancy for landlords' use of the property be dismissed. If the 2 Month Notice were not dismissed should the landlords receive an Order of Possession. Are the tenants entitled to a monetary order equivalent to one month's rent? Are the tenants entitled to recover their filing fee for their application from the landlords?

### Background and Evidence

The tenants testified that they first moved into a rental unit in this three storey rental property in 1975. Since that time, they have lived in a number of different suites in this building. They testified that they have been living in this rental suite since 1991 or 1992. The landlords did not have detailed records regarding occupancy that pre-dated their purchase of this property in September 2006.

Current monthly rent is set at \$804.79, payable in advance on the first of each month. There was some disagreement on the amount of security deposit that the tenants have paid for the various rental units they have occupied since 1975. They said that they paid a \$100.00 security deposit in 1975, a second \$100.00 security deposit in 1976, and a final security deposit of \$100.00 in March 1991. The landlords only have record of the final \$100.00 payment. The parties agreed at the hearing that the tenants have written evidence of paying \$200.00 in security deposits for the 1976 and 1991 payments.

The parties also agreed that the \$804.79 monetary Order requested by the tenants is the provision under section 51(1) of the *Act* that a tenant receiving a notice to end a tenancy under section 49 for landlord's use of the property is entitled to receive "an amount that is the equivalent of one month's rent payable under the tenancy agreement." Both parties agreed that if the tenants are required to vacate the rental unit by July 31, 2011, the landlords will allow them to remain in the rental unit for the last month without paying rent.

At the hearing, the male landlord and his daughter both testified that the landlords have listed their own home for sale and intend to relocate to the tenants' suite in this three storey rental property. They entered into written evidence a copy of an exclusive listing contract with a realty company for the sale of their primary residence. This contract commenced on May 26, 2011 and is to continue until November 26, 2011, by which time they are expecting their home to have sold. The 2 Month Notice was issued by the family corporation listed as the landlords on May 27, 2011, the day after they signed this exclusive listing contract. The landlords' daughter testified that her parents have spatial and directional beliefs that require them to have this spacious rental unit in their property, requirements that limit their choice of a unit in this building to the tenants' rental unit.

### Analysis

In their written evidence and at the hearing, the tenants asked that consideration of the landlords' present 2 Month Notice be viewed as one of a series of notices issued to them by the landlords since they purchased the property in 2006. The tenants entered into written evidence a copy of a March 7, 2007 decision of the Residential Tenancy Branch (RTB) dismissing the landlords' December 22, 2006 application to renovate and repair this rental unit. The tenants also provided a copy of a June 25, 2007 decision of the RTB to set aside the landlords' notice to end this tenancy for the use of the rental unit by the landlords' daughter.

I have reviewed and considered the tenants' claim that the true purpose of the landlords' present 2 Month Notice is to obtain possession of their rental unit so that they

can renovate and charge higher rent to new tenants. However, I find that the 2 Month Notice should be considered on its own merits as over four years have now passed since the landlords' last issuance of a notice to end tenancy for this rental unit.

The landlords, a family corporation that owns the rental property, listed the following reasons for issuing the 2 Month Notice to the tenants:

*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The landlords did not identify the following reason which would be the accurate reason whereby a family corporation such as the one listed as the landlord for this property could end a tenancy for landlord use of the property:

*A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares...*

For that reason alone, I find the landlords' 2 Month Notice to the tenants flawed. However, as set out below, I have additional reasons for cancelling this 2 Month Notice.

At the hearing, the female tenant asked why there was no reference to the landlords' actual residential address in the exclusive listing contract they entered into written evidence. The landlords' daughter testified that the landlords listed only the legal description of their home on the listing contract out of privacy concerns. Without a residential address, I find it is difficult to determine if the property identified in the exclusive listing contract is the actual primary residence of any of the members of the family corporation or if it pertains to some other property that the members of the family corporation own. I also note that the postal code for the address of the family corporation also varies from that shown as the address for the property listed in the exclusive listing contract, adding further doubt to the relevance of the exclusive listing contract. In addition, the 2 Month Notice relies on the landlords' anticipation that they may require the tenants' rental unit if they are able sell their primary residence. No sale has occurred and no plans are in place requiring members of the landlords' family corporation to obtain alternative accommodations.

For all of these reasons, I find that the family corporation listed as the landlord has not met the burden of proof required to demonstrate that the 2 Month Notice issued to the tenants on May 27, 2011 was issued correctly or that members of that family corporation or their family members need to occupy this rental unit due to the sale of their primary residence. Perhaps at some point, the family corporation that owns this rental unit may be entitled to end this tenancy on the basis of a properly worded 2 Month Notice issued at a time when the family corporation is certain of its housing

needs. However, at this time, I find that this is not the case and, as such, I set aside the landlords' 2 Month Notice. I cancel the landlords' 2 Month Notice with the effect that this tenancy continues.

Since the 2 Month Notice is cancelled, the tenants are not entitled to a monetary Order pursuant to section 51(1) of the *Act*.

As the tenants have been successful in their application, I find that they are entitled to recover their \$50.00 filing fee for their application from the landlords. To enable them to recover their filing fee, I allow them to reduce their next scheduled monthly rental payment by \$50.00 for one month only.

### Conclusion

I cancel the landlords' 2 Month Notice issued on May 27, 2011, with the effect that this tenancy continues. I dismiss the tenants' application for a monetary Order for damage or loss arising out of this tenancy. I allow the tenants to recover their \$50.00 filing fee for their application from the landlords by reducing their next scheduled monthly rental payment by \$50.00 on a one-time basis.

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*.