



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing was convened by way of a conference call in response to an application made by the tenants to: cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; for an order asking the landlord to comply with the Act, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant filed this application on May 27, 2013 and served the landlord by registered mail on May 28, 2013 with a copy of the application and Notice of Hearing. The landlord confirmed receipt of the hearing documents and based on this I find the landlord was served in accordance with the *Residential Tenancy Act*.

Both parties attended the conference call hearing, during which they gave affirmed testimony, all of which has been reviewed and considered in this Decision.

Issue(s) to be Decided

- Have the tenants applied for dispute resolution to cancel the notice within the allowable time limit?
- Have the tenants provided sufficient evidence that the Notice to End Tenancy should be cancelled?
- Have the tenants established that the landlord should be ordered to comply with the *Residential Tenancy Act*?

Background and Evidence

Both parties agreed that the fixed term tenancy started on March 1, 2012 for a period of one year, after which time it went onto a month-to-month basis. Rent in the amount of \$1,800.00 was payable on the 1st day of each month, but this was reduced shortly after

to \$1,500.00. The landlord collected a security deposit from the tenant in the amount of \$900.00 on February 10, 2012.

The tenants testified that the landlord issued them with a 2 Month Notice to End Tenancy for Landlord's Use of Property on May 9, 2013 by registered mail which they received on May 10, 2013. The notice was submitted as evidence and shows the reason for ending the tenancy selected by the landlord on the second page was because "*All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*" The effective date of the notice is July 31, 2013.

The landlord testified that the rental property was put up for sale on March 1, 2013 because she could not afford to carry it and to date, it still remains unsold. The landlord confirmed that the notice had been given to the tenants with the incorrect reason on page two of the notice and that she had phoned the tenants to explain this to them. Her intention was to issue the notice because she needed it for her daughter and granddaughter to live in.

During the hearing the tenants refused to accept the notice for this reason and stated that the notice was not correct and therefore invalid and want the landlord to comply with the *Act* in issuing the correct notice. The tenants now seek to cancel this notice to end tenancy.

Analysis

Section 49(8) of the *Residential Tenancy Act* (referred to as the *Act*) states that a tenant may dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property by making an Application for Dispute Resolution within 15 days after the date the tenant receives it. Although the notice to end tenancy was sent by the landlord to the tenants using registered mail on May 9, 2013, the tenants confirmed that they received the notice on May 10, 2013. Therefore, I find that the tenants had until May 25, 2013 to make the application. However, since that date fell on a weekend, pursuant to Section 25(3) of the *Interpretation Act*, I find that the tenants are allowed the next business day after May 25, 2013 to make the application, extending the allowable time limit to May 27, 2013. As the application to dispute the notice was made on May 27, 2013, I find that the tenants made the application within the time limit afforded to them under the *Act*.

Section 52(d) of the *Act* refers to the content of a notice to end tenancy and requires that the notice state the grounds for ending the tenancy. The landlord had issued the

notice to the tenant because the conditions of a sale of the property had been met. However, the landlord testified that this was not the case verifying what the tenants had stated in their testimony. Therefore, I make a finding that the notice to end tenancy issued to the tenants on May 9, 2013 did not contain the correct grounds to end the tenancy. Therefore the notice is hereby cancelled and rendered ineffective as it did not comply with the requirement under the *Act*.

As the tenants have been successful in cancelling this notice, I award the tenants \$50.00 for the cost of this application pursuant to Section 72(1) of the *Act*. The tenants may recover this cost either by deducting \$50.00 from one future rent payment only OR by serving the landlord a monetary order which is included with this decision for the tenant.

Conclusion

For the reasons set out above, I hereby cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property.

I also grant a monetary order in favour of the tenants pursuant to Section 72(1) of the *Residential Tenancy Act* in the amount of \$50.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: June 13, 2013

Residential Tenancy Branch