



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for landlord's use of property and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the conference call hearing, and the landlord was originally represented by an agent, who did not act as an agent for the purposes of the hearing, but was affirmed to give oral testimony. The landlord and one of the tenants also gave affirmed testimony. The parties provided evidentiary material prior to the commencement of the hearing and the parties were given the opportunity to cross examine each other on the evidence and testimony provided.

During the course of the hearing, the tenants withdrew the application for a monetary order.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for landlord's use of property?

Background and Evidence

The parties agree that this month-to-month tenancy began on September 6, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$600.00 per month is payable in advance on the 1st day of each month. No security deposit or pet damage deposit was collected by the landlord.

The landlord testified that on April 20, 2013 a filter broke and flooded the rental unit. The tenants were not charged rent for May or June, 2013. However, the landlord's sister had been collecting the rent and the tenants had advised the landlord's sister about the flood on April 20, 2013. The landlord's sister made the landlord aware of it on April 26, 2013.

On May 10, 2013 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which was provided by the tenants for this hearing. The notice is dated May 10, 2013 and contains an expected date of vacancy of July 31, 2013. The landlord testified that the notice was served by personally handing it to one of the named tenants on May 10, 2013. Page 2 of the notice has not been completed, thereby not giving a reason for ending the tenancy.

The landlord's witness testified that renovations need to be done as a result of the flood, and the landlord tried to give the tenants lots of notice. Although no reason is indicated on the notice to end tenancy, the tenants were told of a concern of asbestos in the rental unit.

Analysis

Where a tenant disputes a notice to end tenancy, the onus is on the landlord to prove the reasons for issuing the notice. In the absence of any reason stated on the notice, no reasons can be justified. The *Residential Tenancy Act* requires a landlord to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property in good faith, meaning that the landlord must not have any ulterior motive for issuing it. Further, and more specifically, the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In the circumstances, I find that the landlord has not complied with Section 52 (d) of the *Act*, and the notice must be cancelled.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, the tenants' application for a monetary order is hereby dismissed as withdrawn.

The notice to end tenancy issued on May 10, 2013 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants in the amount of \$50.00 as recovery of the filing fee for the cost of this application. The amount may be deducted from a future month of rent or otherwise recovered.

This order is final and binding on the parties and may be enforced.

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 28, 2013

Residential Tenancy Branch

