



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by both tenants; their advocate; the landlord; and her agent.

At the outset of the hearing the tenant's clarified indicated that they no longer were seeking financially compensation and amended their Application to exclude the monetary order.

The tenants also clarified that they were not questioning the landlord's intent in issuing a 2 Month Notice to End Tenancy for Landlord's Use of Property, but rather they were seeking to cancel the Notice due to the effective date of the Notice.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on October 12, 2012 for a two year fixed term tenancy beginning on October 12, 2012 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid.

The tenants provided a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on November 9, 2013 with an effective vacancy date of January 31, 2013 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice; the day before the day in the month that rent is payable under the tenancy agreement; and if the tenancy agreement is a fixed term tenancy agreement not earlier than the date specified as the end of the tenancy if the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;

Section 53 of the *Act* states if a landlord gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under the effective date is deemed to be changed to the earliest date permitted under the applicable Section.

As such, I find the Notice cannot be cancelled solely on the basis of an incorrect effective date but rather that the notice remains effective with an amended effective date that is compliant with, in the case before me, Section 49.

As the fixed term tenancy is scheduled to end, according to the tenancy agreement, by October 11, 2014 I find the earliest effective date of the Notice to be October 11, 2014.

Conclusion

Based on the above I dismiss the tenant's Application but I correct I order the effective date to be changed to October 11, 2014.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from a future rent payment.

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: January 14, 2014

Residential Tenancy Branch

