



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, (CNL), FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a Two Month Notice to End Tenancy for landlord's use of the property. The tenants had inadvertently selected to cancel a One Month Notice to End Tenancy on their application. However at the hearing it was determined that it was a Two Month Notice served upon the tenants and not a One Month Notice. The parties did not raise any objections to me amending the tenants' application. The tenants also seek to recover the filing fee from the landlords for the cost of this application.

One of the tenants and one of the landlords attended the conference call hearing and gave sworn testimony. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to have the Two Month Notice to End Tenancy cancelled?

Background and Evidence

The parties agree that this tenancy started on September 01, 2012 for a fixed term tenancy for one year. This fixed term agreement ended on August 31, 2013. As no other written fixed term lease was entered into the tenancy has continued on a month to

month basis since that time. Rent for this unit is \$1,350.00 per month and is due on the first day of each month.

The landlord testifies that the tenants were served with a Two Month Notice to End Tenancy on December 05, 2013. This Notice was served upon the tenants on December 05, 2013 by registered mail. The Notice does not provide a reason to end the tenancy although the landlord testifies that he wrote to the tenants outlining the reason that due to the failing health of his parents, they must move back to their home on the farm to help out.

The landlord testifies that he does not understand why the copy provided in evidence does not have a check mark against the first reason to end the tenancy as the landlords copy does have a check mark. The landlord testifies that the tenant may have provided a fraudulent copy of the Notice and removed the check mark against the given reason that the unit will be occupied by the landlord, the landlords spouse or a close family member.

The tenants dispute the Two Month Notice and testify that they cannot vacate the unit at this time due to its location they would be unable to get a moving truck to the farm in the snow. The tenant also disputes altering the Two Month Notice in any way.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenants are deemed to have received the Two Month Notice five days after it was sent by registered mail. As this Notice was posted on December 05, 2013 it was deemed served on December 10, 2013 pursuant to s. 90 of the *Residential Tenancy Act (Act)*. The tenants had five days to file an application to dispute the Notice but did not do so until January 10, 2014.

The landlord has testified that the tenants must have altered the Notice and removed the check mark against the reason to end the tenancy. On consideration of the evidence provided I find that the landlords provided a copy of the Two Month Notice and not the tenants. Therefore the landlords claim that the tenants have altered the Two Month Notice has not been considered and it is my decision that the landlords documentary evidence shows that the Notice is incomplete. The landlords are required to serve a complete Notice and have failed to indicate on the Notice any reason to end the tenancy. In Order to be valid a Notice must be complete; It is insufficient for a landlord to writ separately to the tenants and give a reason why they want to end the tenancy as any reason must be documented on page two of the Notice.

Consequently, I must determine that the Notice is incomplete and therefore this renders the Notice invalid and it is hereby set aside.

The landlords are at liberty to serve the tenants with another Two Month Notice to End Tenancy if they so choose to do so.

Conclusion

The tenants' application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated December 05, 2013 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, the tenants are entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: March 04, 2014

Residential Tenancy Branch

