



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 989677 AB LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, 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, dated November 12, 2014 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlords did not attend this hearing, although it lasted approximately 30 minutes. The landlords did not file any evidence in respect of this application. The tenant JG ("tenant") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed that he had authority to appear as agent on behalf of the other tenant, AG (collectively "tenants").

The tenant gave sworn testimony that the 2 Month Notice, which states an effective move-out date of April 30, 2015, was served upon both tenants by way of email on December 15, 2014. Although email is not an acceptable method of service pursuant to section 88 of the *Act*, the tenant confirmed receipt of the 2 Month Notice. Accordingly, I find that the tenants were sufficiently served for the purposes of section 71(2)(c) of the *Act*, with the landlords' 2 Month Notice, on December 15, 2014.

The tenant testified that he served the landlords with the tenants' Application for Dispute Resolution hearing package ("Application") on December 31, 2014, by way of registered mail, separately to all three named landlords. The tenants provided Canada Post receipts and tracking numbers as proof of service, with their Application. The tenant testified that he checked the Canada Post tracking website and discovered that all three packages were signed for and successfully delivered. In accordance with sections 89

and 90 of the *Act*, I find that the landlords were deemed served with the tenants' Application on January 5, 2014, the fifth day after its registered mailing.

Issue to be Decided

Should the landlords' 2 Month Notice be cancelled?

Background and Evidence

The tenant testified that this tenancy began on March 1, 2014 for a fixed term to end on February 28, 2015, after which it will continue as a month to month or another fixed length of time. Monthly rent of \$2,200.00 is payable on the first day of each month. A security deposit in the amount of \$1,100.00 and a pet damage deposit in the amount of \$1,100.00, were both paid by the tenants for this tenancy, which the landlords continue to retain. The tenants provided a copy of the tenancy agreement with their Application. The tenants continue to reside in the rental unit.

The tenant testified that although the 2 Month Notice is dated for November 12, 2014, the tenants did not receive it until December 15, 2014. The tenant provided an email from the landlord, dated December 15, 2014, in which the landlords attached the 2 Month Notice and referenced amending the notice to include April 30, 2015 as the effective move-out date. The tenant provided this email via facsimile after this hearing, as I requested that he do so, since he did not include this email with the tenants' Application.

The tenants seek to recover the \$50.00 filing fee for their application, from the landlords.

Analysis

Where the tenants apply to dispute a 2 Month Notice, the onus is on the landlords to prove, on a balance of probabilities, the grounds on which the 2 Month Notice is based. The landlords did not submit any evidence or appear at this hearing. The landlords did not meet their onus of proof. Thus, the 2 Month Notice is set aside and is of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in their Application, they are entitled to recover the \$50.00 filing fee from the landlords.

Conclusion

I allow the tenants' application to cancel the 2 Month Notice. The 2 Month Notice, dated November 12, 2014, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order that the tenants are entitled to deduct \$50.00 from their future rent at the rental unit, to recover the filing fee for this Application from the landlords. This is in accordance with the offsetting provisions of Section 72(2)(a) of the *Act*.

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 27, 2015

Residential Tenancy Branch

