



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a Two Month Notice to End Tenancy for landlords' use of the property and to recover the filing fee from the landlords for the cost of this application.

The tenants and 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. The parties presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this.

Issue(s) to be Decided

Are the tenants entitled to an Order cancelling the Two Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2014 for a five year fixed term lease that is due to end on June 30, 2019. Rent for this unit is \$1,300.00 per month due on the 1st of each month.

The landlord SB testified that the tenants were served a Two Month Tenancy for landlords' use of the property (the Notice) on January 20, 2015. The Notice provided a reason to end the tenancy that the rental unit will be occupied by the landlord or the

landlords spouse or a close family member of the landlord or the landlord's spouse. The Notice has an effective date of March 31, 2015.

SB agreed that they are aware that as this is a fixed term tenancy that they are not allowed under the *Residential Tenancy Act (Act)* to end the tenancy because the landlord seeks to use the property. SB testified that if the tenants agree to vacate the unit the landlords will continue to honour the Notice and provide the tenants with compensation equal to their last month's rent. If the tenants do not agree to vacate the unit the landlords will be serving the tenants with a One Month Notice to End Tenancy for cause and a 10 Day Notice to End Tenancy for unpaid rent.

The tenants testified that there is no availability for rentals in the area so the tenants cannot vacate the rental unit. The tenants testified that they signed the five year lease agreement to provide them with some security so they did not have to move again. The tenants testified that they do not want to move and expect the landlords to honour the lease agreement. The tenants therefore seek to have the Notice cancelled and to recover their \$50.00 filing fee from the landlords.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 49(2) of the *Act* which states:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

As this is a fixed term tenancy that has a specified date to end as of June 30, 2019, the landlords may not end this tenancy by issuing the tenants with a Two Month Notice to End Tenancy for landlords' use of the property. Consequently, I uphold the tenants' application to cancel the Notice.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlords' use of the property dated, January 20, 2015 is cancelled and the tenancy will continue.

I further Order that the landlords bear the cost of the filing fee paid for this hearing. The tenants may therefore deduct **\$50.00** from rent payable to the landlord for April, 2015 pursuant to s. 72(1) 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: March 04, 2015

Residential Tenancy Branch

