



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's 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 (the 2 Month Notice) pursuant to section 49; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of the tenants' notice of hearing package and the submitted documentary evidence. Both parties also confirmed receipt of the landlords' submitted documentary evidence. On the basis of this evidence, I am satisfied that both parties were properly served with the submitted documentary evidence pursuant to section 88 and the dispute resolution package pursuant to section 89 of the *Residential Tenancy Act* (the Act).

At the end of the hearing the landlord who attended this hearing (the landlord) provided a mailing address for delivery of the decision. The Residential Tenancy Branch File shall be updated with this information.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 Month Notice?

Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

Both parties confirmed that this tenancy began on January 1, 2015 on a fixed term tenancy ending on December 31, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 8, 2014. The monthly rent is \$1,000.00 and payable on the 1st of each month.

Both parties confirmed that the 2 Month Notice dated June 15, 2015 was served by the landlords upon the tenants on June 15, 2015. The landlord's 2 Month Notice, entered into written evidence by the tenants, identified the following reasons for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The 2 Month Notice displays an effective end of tenancy date of August 15, 2015.

Analysis

In accordance with subsection 49(8) of the Act, the tenant must file his or her application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant received the 2 Month on June 15, 2015. The tenants filed their amended application for dispute resolution on June 29, 2015. Accordingly, the tenants filed within the fifteen day limit provided for under the Act.

Residential Tenancy Branch (RTB) Policy Guideline #30, Fixed Term Tenancies states,

“During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties...A landlord cannot give notice for owner occupancy or purchaser occupancy that will have the effect of ending a fixed term tenancy before the end of the fixed term.”

This is a fixed term tenancy which began on January 1, 2015 and ends on December 31, 2015, I find that the landlords 2 Month Notice is unenforceable as per RTB Policy Guideline #30, Fixed Term Tenancies. The tenants' application is granted, the 2 Month Notice dated June 15, 2015 is set aside and the tenancy shall continue.

As the tenants have been successful in this application, I allow the tenants to recover their \$50.00 filing fee.

Conclusion

I allow the tenants' application to cancel the 2 Month Notice of June 15, 2015. This tenancy continues and the 2 Month Notice of June 15, 2015 is of no force or effect.

I issue a monetary award in the tenants' favour in the amount of \$50.00 to enable them to recover their filing fee. To implement this portion of my decision, I order the tenants to reduce their next scheduled monthly rent payment by \$50.00. This is a one-time reduction and monthly rent reverts to its previous level on the month following this \$50.00 reduction in rent.

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: August 17, 2015

Residential Tenancy Branch

