



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 as the result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property ("Notice") and for recovery of the filing fee paid for this application.

The tenants attended the telephone conference call hearing; the landlord did not attend.

The tenants testified that they served the landlord with their application for dispute resolution and notice of hearing by registered mail on or about July 16, 2015 and by hand delivery on that date. The tenants submitted that there was a text message confirming the landlord received the tenants' application.

Based upon the submissions of the tenants, I find the landlord was served notice of this hearing and the tenants' application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The Notice was not before me at the hearing, although the tenants submitted that a copy of the Notice was included with their application as evidence. I allowed the tenants to send a copy of the Notice by facsimile after the hearing had concluded, with the proviso that the facsimile transmission would be sent by the end of

the business day, the day of the hearing. It is noted that the tenants did comply with this request, and I therefore considered this Notice of the landlord as evidence.

Issue(s) to be Decided

Are the tenants entitled to a cancellation of the Notice and to recovery of the filing fee paid for this application?

Background and Evidence

The tenants submitted that the landlord served them with the Notice on June 30, 2015, listing an effective end of tenancy date of August 31, 2015. The tenants filed an application to dispute the Notice on July 13, 2015, which was dated June 30, 2015.

The tenants submitted that they were recently in a dispute resolution hearing on their application to dispute two other 2 Month Notices issued by the landlord, for the same reasons. The tenants referred to that Decision, and thereafter, I reviewed that Decision, dated April 30, 2015.

In that Decision of another Arbitrator, the Arbitrator wrote that the landlord withdrew one of the 2 Month Notices and the Arbitrator cancelled the other Notice, dated April 10, 2015. As reason for ending the tenancy, that Notice listed the landlord had all of the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. The other Arbitrator found that the landlord did not have the necessary permits and approvals when cancelling the Notice.

In the present case, the Notice of June 30, 2015, also listed as reason that the landlord had all of the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants submitted that the landlord did not have the necessary permits and approvals. The landlord additionally did not file any evidence in response to the tenants' application and did not attend the hearing.

Analysis

Under section 49(6) of the Act, a landlord may serve a tenant a 2 Month Notice if the landlord has all of the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

Under section 49(8) of the Act, the tenants had 15 days to file their application in dispute of the Notice and in this case, the tenants did so.

When a landlord issues a notice to end a tenancy and the tenants file an application to dispute the notice within the required time frame, the landlord has the onus to prove and demonstrate that there is sufficient reason under the Act to end the tenancy.

As the landlord did not appear in the hearing to support their Notice, after being properly served with the tenants' application and notice of this hearing, I grant the tenants' application and order that the Notice dated June 30, 2015, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

As I have granted the tenants' application, I grant them recovery of their filing fee of \$50.00. The tenants are directed to deduct \$50.00 from their next or a future month's monthly rent payment, advising the landlord of when taking this deduction.

The tenants did not file a monetary claim; however, as the Notice issued to the tenants in the present case is the third 2 Month Notice since March 31, 2015, with three instances of the Notice determined not to be valid, the landlord is advised that the issuance of unfounded Notices may subject the landlord to monetary compensation to the tenants for loss of quiet enjoyment.

Conclusion

The tenants' application seeking cancellation of the Notice is granted as I have cancelled the landlord's Notice, dated June 30, 2015.

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: September 15, 2015

Residential Tenancy Branch

