



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a Two Month Notice to End Tenancy for Landlord's Use of Property set aside, a monetary order and an order to recover the filing fee for this application. The tenants participated in the conference call hearing but the landlord(s) did not. The tenants presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by having a witness present when personally serving them on June 10, 2016. I found that the landlord had been properly served with notice of the tenant's claim, documentary evidence, and the date and time of the hearing and the hearing proceeded in their absence. The tenants gave affirmed evidence.

Preliminary Issue

At the outset of the hearing the tenants advised that they were not in a position to proceed with the monetary portion of their application and requested to withdraw that portion, accordingly; I grant the tenants request and dismiss the monetary portion of their application with leave to reapply.

Issues to be Decided

Are the tenants entitled to have the notice to end tenancy set aside?

Background and Evidence

The tenants gave the following testimony: The tenancy began on or about July 15, 2013. Rent in the amount of \$760.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security

deposit in the amount of \$360.00 and a pet deposit of \$37.50. The tenants stated that the landlord issued a Two Month Notice to End Tenancy on May 31, 2016 with an effective date of July 31, 2015 on the grounds that the landlord or a close family member was going to be moving in.

The tenants stated that the landlord is not going to be moving in as he has arranged access to the unit for showings with the subject tenants; to potential new tenants. The subject tenants stated that parties that came to view the suite advised them that the landlord is asking \$1200.00 for rent. The subject tenants stated that the landlord has clearly issued the notice in bad faith and is ending the tenancy only to raise the rents and not move in.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

When a landlord issues a notice to end tenancy they bear the responsibility of providing sufficient evidence to support the issuance of that notice. The tenants have raised the issue of whether the notice was issued in good faith. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy. In this case, the landlord has chosen not to participate in the teleconference or submit any documentation for consideration.

Based on the insufficient evidence from the landlord, the undisputed testimony of the tenants and on a balance of probabilities, I hereby set aside the notice to end tenancy.

As the tenants have been successful in this application they are entitled to the recovery of the \$100.00 filing fee. I order a onetime rent reduction of \$100.00 from the tenants' next rental payment due.

Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property dated May 31, 2016 with an effective date of July 31, 2016 is set aside. It is of no force or effect. The tenancy continues.

The tenants' monetary portion of their application is dismissed with leave to reapply.

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: July 13, 2016

Residential Tenancy Branch