



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

One of the landlords and both tenants attended the hearing, and the landlord also represented the other named landlord. All parties gave affirmed testimony and were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?
- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to a fixed term contract?

Background and Evidence

The landlord testified that this tenancy began on July 15, 2016 and the tenants still reside in the rental unit. Rent in the amount of \$2,000.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family dwelling.

A copy of the tenancy agreement has been provided which shows that the rental unit is rented on a month-to-month basis, but also states that it is for a fixed term ending on July 15, 2017, and at the end of this fixed length of time the tenancy may continue on a month-to-month basis, which is initialled by the landlord but not by either tenant.

On December 21, 2016 the landlords' realtor served one of the tenants personally with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. It is dated December 21, 2016 and contains an effective date of vacancy of March 1, 2017. The reason for issuing it states: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." Also provided is a document entitled, "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession." It appears to have been electronically signed by a person on December 16, 2016 but no signature appears beside the "Witness" portion. It also states that the Contract of Purchase and Sale was made on December 1, 2016 and requests vacant possession by 1:00 PM March 1, 2017.

The landlord further testified that while attempting to sell the house in September, purchasers wouldn't look at the house because the contract with the tenants wasn't clear enough. Potential purchasers and the realtor wanted a firm tenancy agreement. The landlord asked the tenants to change it from a 1 year lease to a month-to-month tenancy, but they refused unless the landlords agreed to change other terms regarding the yard. The landlords did not agree to those terms and a new tenancy agreement was never signed by the parties.

The landlord testified that the tenancy agreement is not valid, which was confirmed by the landlords' realtor.

The first tenant (EPF) testified that he checked box on the tenancy agreement showing a month-to-month tenancy and the commencement date of July 15, 2016. The landlord was adamant about a 1 year lease, and the parties talked about that before they moved in, and the tenants agreed. If it had not been a long term, the tenants would not have moved in, not wanting to up-root their children during the school year, and told the landlords that. The landlords were trying to sell, but said it would be taken off the market. The house was re-listed for sale in mid-October, 2016 and the landlords had a meeting with the tenants and the realtor asking if the tenants would stay as tenants or if they would agree to an increase in rent. The tenants were told not to worry about the sale and that they would not have to move until July, 2017. The parties also had several phone calls and text messages to that effect.

The second tenant (EMN) testified that the tenants had every intention of staying in the rental unit for a full year, not wanting to relocate while their children were in school.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*.

The *Act* permits a landlord to sell rental property and to serve a 2 Month Notice to End Tenancy for Landlord's Use of Property, but the effective date of such notice cannot be sooner than the end date of a fixed term tenancy. If a rental property sells before that date, the tenancy agreement falls to the purchaser. Further, a purchaser must give the landlord a request in writing to give the notice because the purchaser intends in good faith to occupy the rental unit. The copy I've received has an electronic signature, but a place for a witness to sign has been left blank.

Where the tenancy agreement is unclear, the intention of the parties at the time it was entered into is an important factor. In this case, the tenancy agreement contains both a fixed term and a check-mark beside "month-to-month." The first tenant testified that the landlords were adamant about having a year lease, and the landlord did not dispute that.

In the circumstances, I accept that the tenancy was intended to be a fixed term which does not expire until July 1, 2017, and the 2 Month Notice to End Tenancy for Landlord's Use of Property is cancelled.

Since the tenants have been successful the tenants are also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenants in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 21, 2016 is hereby cancelled and the tenancy continues to the end of the fixed term.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I

order that the tenants be permitted to reduce rent by that amount for a future month or may otherwise recover it.

This order is final and binding and may be enforced.

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 31, 2017

Residential Tenancy Branch