



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, LRE, OLC

Introduction

This hearing dealt with the tenants' 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant, A.L. (the tenants) attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend. The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 17, 2017. I accept the undisputed affirmed evidence of the tenants and find that both parties have been sufficiently served as per section 90 of the Act.

After lengthy discussions, the landlord's application was clarified in that the tenants were not seeking an order to cancel the 2 Month Notice, rather a finding on the effective end of tenancy date of the 2 Month Notice. The tenants also clarified that since they are seeking to end the tenancy that the request for an order to suspend or set conditions on the landlord's right to enter the rental unit and for an order for the landlord to comply with the Act, regulations or tenancy agreement is no longer required. As such, no further actions are required for those portions of the application.

The tenants made a request to amend the application to add a monetary claim for the loss of quiet enjoyment. The tenants were notified that without a proper amendment filed prior to the start of the hearing or proper notice given to the respondent to respond to the amendment, the tenants' monetary claim could not be heard as part of this application. The tenants were informed that they were free to file a separate application for monetary compensation.

Issue(s) to be Decided

Are the tenants entitled to a finding on the effective end of tenancy date of the 2 Month Notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2016 on a fixed term tenancy ending on June 1, 2017 as per the submitted copy of the signed tenancy agreement dated April 15, 2016. The monthly rent is \$1,450.00 payable on the 1st day of each month. A security deposit of \$725.00 was paid on May 1, 2016.

The tenant provided undisputed affirmed testimony confirming that the landlord served to the tenants the 2 Month Notice to End Tenancy issued for Landlord's Use dated January 31, 2017 on February 2, 2017 in person. The 2 Month Notice sets out an effective end of tenancy date of April 1, 2017 and one reason as:

All 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.

The tenant stated that since the 2 Month Notice was served in person on February 2, 2017 that the effective end of tenancy of the 2 Month Notice should be April 30, 2017 and not April 1, 2017. The tenants seek a finding clarifying the effective end of tenancy date.

Analysis

Where a landlord provides for an incorrect effective date on a notice to end tenancy, section 53 of the Act deems it to be changed, where the given date is earlier than the correct effective date, to the earliest date permitted under that section/where the given

date is any day other than the day before the day in the month where rent is payable under the agreement, the effective date is changed to the day before the day in the month that complies with the notice required period or where the landlord gives a longer notice period, that complies with that longer notice period.

The tenant provided undisputed affirmed evidence that the 2 Month Notice dated January 31 was served in person on February 2, 2017. The monthly rent is payable on the 1st day of each month. I find that the effective end of tenancy date provided on the 2 Month Notice (April 1, 2017) to be ineffective and correct it to April 30, 2017,

The tenants having been successful are entitled to a monetary order of \$100.00 for recovery of the filing fee.

Conclusion

The tenants are granted a finding that the effective end of tenancy date of the 2 Month Notice dated January 31, 2017 is corrected to April 30, 2017.

The tenants are granted a monetary order for \$100.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 14, 2017

Residential Tenancy Branch