



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL LRE O FF

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 ("2 Month Notice") pursuant to section 49; an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony and to make submissions. The landlord attended late and, when he was present on the line, he confirmed receipt of the tenant's application for dispute resolution and evidentiary materials. The landlord did not submit any materials for the hearing.

The tenant withdrew his application to restrict the landlord's access to the rental unit and his application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use as he has found another rental unit. He testified that he and his co-tenant will be vacating this rental unit on June 30, 2017 (4 days after this hearing date). Within the tenant's application details (under the hearing nature of the dispute/other issue or remedy) he requested that the landlord receive clarification on the landlord's obligation pursuant to section 49 of the Act and other provisions relating to a 2 Month Notice. He wrote that the landlord refuses to pay the compensation required after the issuance of a 2 Month Notice.

Issue(s) to be Decided

Should the tenant be entitled to compensation as a result of the landlord's issuance of a 2 Month Notice to End Tenancy? Is the tenant entitled to recover his filing fee?

Background and Evidence

The tenant acknowledged receipt of a 2 Month Notice to End Tenancy for Landlord's Use. The landlord's 2 Month Notice, entered into written evidence, identified the following reason 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 ... of the landlord or the landlord's spouse...

The 2 Month Notice is dated May 6, 2017 and indicates an effective move-out date of July 15, 2017. The tenant testified that his \$1800.00 rental amount is regularly due on the 15th of each month. The tenant testified that, after receiving the 2 Month Notice, he and his co-tenant originally applied to dispute the 2 Month Notice and prove that the landlord was not acting in good faith with respect to his notice. The tenant testified that the landlord has issued previous notices to end tenancy for different reasons. He submitted a variety of real estate advertisements of his rental unit with date ranges from May 2017 to June 2017.

The tenant no longer sought to dispute the 2 Month Notice and testified that he and his co-tenant have found a new rental unit to reside in as of July 1, 2017. The undisputed sworn testimony of the tenant was that he has paid all monthly rent in full up to and including July 15, 2017. The tenant sought to recover the 1 months' free rent or the equivalent in compensation as the tenant has agreed to vacate in accordance with the 2 Month Notice.

Both parties agreed that the landlord will return the equivalent of 2 weeks' rent as the tenants have paid rent until July 15, 2017 and the tenants are vacating the rental unit on June 30, 2017. Furthermore, both parties agree that the security deposit should be addressed at the end of tenancy in accordance with section 38 and other applicable sections of the Act. The landlord acknowledges that, if an agreement cannot be made between the parties with respect to the security deposit, he must file to retain all or a portion of the security deposit in accordance with the Act. I provide a portion of the Act relating to the return of security deposits for the use of the landlord and tenant.

The tenant also sought to recover his filing fee. He stated that the landlord has known for some time that he will vacate the unit in accordance with the 2 Month Notice but has refused to acknowledge that he is required to compensate the tenant pursuant to the 2 Month Notice.

Analysis

Pursuant to section 49 of the Act, the landlord may end a tenancy if he, in good faith, intends to use the property for his own purposes including but not limited to; having a close family member move in to the rental unit, sale of the property or renovations so substantial that the rental unit must be vacant. When a landlord issues a 2 Month Notice to End Tenancy for Landlord's Use, he is required, pursuant to section 51() to compensate the tenant as follows,

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the **equivalent of one month's rent payable** under the tenancy agreement.

... (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

[emphasis added]

The landlord's obligation to give sufficient notice, act in good faith and compensate the tenant or tenants with respect to a 2 Month Notice to End Tenancy is not contingent upon whether the tenant remains in the rental unit until the effective date of the notice or whether the tenant provides the landlord with notice that the tenant will vacate the rental unit on an earlier date. Therefore, pursuant to section 51(1.2) and as the tenant gave notice that he and his co-tenant will vacate the rental unit on July 1, 2017, the landlord must refund two weeks' worth of rent to the tenants in the amount of \$900.00.

The landlord provided undisputed testimony that the tenants have agreed to allow the landlord to retain \$400.00 to pay final utility amounts for the rental unit thereby reducing the amount owed to the tenants to \$500.00.

The parties agree that the tenant has paid all rent in full and have agreed to vacate the rental unit after the issuance of the 2 Month Notice. Therefore, pursuant to section 50(1) of the Act, the landlord must compensate the tenants one months' rent of \$1800.00.

The tenant also sought to recover his filing fee in this application. As he has been successful in his application and this application would have been unnecessary but for the landlord's failure to know and meet his obligations under the Act, the tenant is entitled to recover \$100.00 from the landlord to recover the filing fee for this application.

Based on the evidence before me, I provide a caution by way of information to the parties at this hearing that, after the end of a tenancy on the basis of a 2 Month Notice, tenants have other remedies available to them under section 50 of the Act, specifically section 50(2) which states,

50(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

I issue a monetary order to the tenant as follows,

Item	Amount
1 month rent equivalent (per 2 Month Notice)	\$1800.00
2 weeks' rent reimbursement (agreed)	500.00
Recovery of filing fee	100.00
Total Monetary Order to Tenant	\$2400.00

The tenants' security deposit will be addressed at the move-out condition inspection and in accordance with the provisions of section 38 of the Act.

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: June 27, 2017

Residential Tenancy Branch