



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's 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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenants provided no documentary evidence. The tenants stated that the landlord was served with the notice of hearing package by giving it in person to an adult at the landlord's residence on May 21, 2017. I accept the undisputed affirmed testimony of the tenants and find that the landlord has been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling 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.

The tenants provided undisputed affirmed testimony that the landlord served to the tenants a 2 Month Notice for Landlord's Use of the Property dated May 1, 2017 on May

1, 2017 in person. The 2 Month Notice sets out an effective end of tenancy date of July 1, 2017. The tenants provided testimony that the reason for the 2 Month Notice is set out as:

The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants argue that the landlord has just 4 days prior demanded that the tenants sign a “blank” tenancy agreement. The tenants stated that a signed tenancy agreement was previously entered into which they did not receive a copy. The tenants questioned the validity of the reason for the notice.

Analysis

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based. The landlord did not submit any evidence or appear for this hearing. The landlord did not meet her onus of proof.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* “2. Good Faith Requirement when Ending a Tenancy” helps explain this “good faith” requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

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.

The tenants question and argue as to whether the landlord is acting in good faith in his issuance of the 2 Month Notice. The 2 Month Notice appears to be an attempt to end the tenancy after the landlord's lack of success with having the tenants sign a "blank" tenancy agreement.

The 2 Month Notice dated May 1, 2017 is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the monthly rent upon receipt of this decision.

Conclusion

The tenants' application is granted. The 2 Month Notice dated May 1, 2017 is cancelled. The tenancy shall continue. The tenants are authorized to withhold \$100.00 one-time from the monthly rent.

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 05, 2017

Residential Tenancy Branch