



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49; an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; authorization to recover the filing fee for this application from the landlords pursuant to section 72. The tenant testified that the application for an order that the landlord comply with the Act relates to the landlord's 2 Month Notice to End Tenancy and does not arise out of a separate issue except that the tenants wish to note that the landlord refused to accept July 2017 monthly rent from the tenants.

Representatives for both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Two tenants attended the hearing and one landlord attended the hearing on behalf of both landlords ("the landlord"). The tenants confirmed receipt of the personally delivered 2 Month Notice to End Tenancy on May 9, 2017. The tenants also confirmed receipt of the landlord's evidentiary submissions for this hearing. The landlord confirmed receipt of the tenants' Application for Dispute Resolution. The tenants did not submit any documentary or other evidence for this hearing.

Preliminary Issue: Failure to provide a copy of the notice to end tenancy as evidence

Residential Tenancy Branch Rules of Procedure (Rule 3) addresses service of dispute resolution application notice of hearing documents as well as submitting and exchanging evidence. I provide the relevant subsections of Rule 3 below for the information of both parties,

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary ...evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch ...not less than 14 days before the hearing. ...

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch ... in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. *The arbitrator has the discretion to determine whether to accept documentary ... evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice...*

[Emphasis added]

In determining an application by the tenants to cancel a notice to end tenancy, there are some essential documents that must be provided as evidence. The applicants (the tenants) failed to provide the notice to end tenancy that they sought to cancel. The landlord submitted evidence prior to this hearing however the landlord also failed to submit a copy of the notice to end tenancy. After the hearing, *when evidence is generally no longer admissible*, the landlord submitted a copy of a notice to end tenancy. The submission is dated the same day as the hearing of this application.

The notice to end tenancy submitted after the hearing by the landlord has an effective date of July 31, 2017. The handwritten date of the 2 Month Notice to End Tenancy is May 8, 2017. Despite the applicant/tenants' failure to provide sufficient evidence with respect to their application and the landlords' failure to submit evidence in accordance with the provisions and timelines of the Act, I will consider this notice to end tenancy as evidence in this matter. I will consider the notice to end tenancy submitted in order to ensure an effective and fair use of this hearing time. Despite the failure of both parties to follow the procedural requirements for a dispute resolution hearing, I find that procedural fairness is met by considering this evidence that is relied on by both parties in their submissions at this hearing.

Issue(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to an Order that the landlord comply with the Act? Are the tenants entitled to recovery of the filing fee for this application?

Background and Evidence

This tenancy began on November 1, 2015 as a one year fixed term. The monthly rental amount of \$1700.00 is payable on the first of each month. The tenants continue to reside in the rental unit as month to month tenants. The landlord continues to hold an \$850.00 security deposit paid at the outset of the tenancy. Neither party submitted a copy of the written tenancy agreement.

Neither party submitted a copy of the notice to end tenancy for this hearing. As noted above, the landlord submitted a copy of the notice to end tenancy after the dispute resolution hearing. Both parties agree that the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use on May 8, 2017 identifying the following reasons for seeking an end to this tenancy:

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

The tenants applied to cancel the notice arguing that;

1. The landlord does not have all the necessary permits to repair the rental unit.
2. The repairs planned by the landlord do not require the rental unit to be vacant.

To support the issuance of a notice to end tenancy, the landlords relied on a letter from the municipal government allowing the landlords to connect to the municipal sewer system as well as a quotation for work to excavate, install a new septic pump and a control panel for the landlords' sewer ("sanitary services") system. None of the documentary evidence supplied by the landlords indicated that the residence must be vacated in order to conduct the work. The landlords indicated that no one really specified in their written documentation that the property needs to be vacant.

The landlord testified that they have tried to negotiate an end to tenancy with the tenants. The landlord testified that they hope to sell their property after upgrading certain features including the septic system. The landlord testified that they also intend to paint the interior of the home, repair a bathroom leak, address a rat infestation and

replace the carpeting in the property. The landlord testified that the septic tank work alone is a big repair and it will be more difficult if the tenants continue to reside on the premises.

The landlords relied on the Public Health Act stating that the discharge of domestic sewage in a way that does not cause a health hazard is incumbent upon the owners of a given property. The landlord testified that the landlords have been told that they are required to make repairs or replacements to improve their sewage system at the residential premises.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a Two Month Notice to End Tenancy on May 8, 2017, the landlords claimed that they had all necessary permits and approvals to demolish or repair the rental unit *in a manner that requires the rental unit to be vacant*. While I accept the landlords' evidence that they have all necessary permits and approvals to make repairs and/or replace the sewage/septic system on their residential (rental) premises, I find that the landlords' evidence has not sufficiently proven that the rental unit must be vacant to effect the sewage work.

The Residential Tenancy Policy Guideline No. 1 addresses repairs for septic, water and oil tanks, specifying that the landlord is responsible for emptying of these tanks, cleaning any blockages, emptying and maintaining a septic tank. The landlord provided candid testimony regarding their intent to do renovations (painting, carpet replacement, etc.) within the rental unit that would, by common sense, require the tenants to vacate the rental unit. Furthermore, at the hearing the landlord provided common sense submissions that the tenants should be housed away from the property while sewage repairs/replacement occurs. However, the landlord candidly conceded that they did not have documentary evidence to support the proposition that the rental unit must be vacant.

Pursuant to the Act, the Residential Tenancy Policy Guidelines and the case law related to 2 Month Notices, the landlords are required to consider whether the tenants can be temporarily re-housed while required repairs are being done. I find that the landlords have not sufficiently considered whether temporary re-housing of the tenants is possible and, based on the evidence before me, I find that the landlord has *not* shown sufficient grounds to validate the 2 Month Notice and obtain an end to this tenancy for Landlord's

Use (repairs). The tenants' application pursuant to section 47(4) of the *Act* made within 15 days of receiving the 2 Month Notice is successful: The 2 Month Notice is cancelled and therefore, the landlord is not entitled to an order of possession.

The landlord is directed to accept rent from the tenants as this tenancy will continue.

As the tenants were successful in their application, they are entitled to recover the filing fee for this application from the landlords.

Conclusion

I grant the tenants' application to cancel the 2 Month Notice to End Tenancy. The 2 Month Notice is cancelled. The tenancy shall continue.

The landlord is directed to accept monthly rent from the tenants as this tenancy will continue.

I grant the tenants a \$100.00 monetary order in order to recover the filing fee for this application from the landlords.

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: August 4, 2017

Residential Tenancy Branch