



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, FF

Introduction

This hearing dealt with the applicants' 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;
- a Monetary Order pursuant to section 67;
- an Order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The applicants were represented at the hearing. LM, the agent for the named co-tenant NA (the "LM") attended the hearing and was given a full opportunity to present affirmed testimony, submit evidence and make submissions.

LM testified that the application for dispute resolution dated June 13, 2017 was served on the landlord by registered mail on that same date. LM provided a Canada Post tracking number and print out of the delivery progress report as evidence of service. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with the dispute resolution package on June 18, 2017, five days after mailing.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the applicants entitled to a monetary award as claimed?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Are the applicants entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

LM provided undisputed evidence regarding the following facts.

In November, 2016 the first tenancy agreement was signed by the landlord, NA's father (the "Father") and her sister (the "Sister"). Though she resided in the rental unit, the named co-tenant NA ("NA") was not a named party in the original tenancy agreement. Under the original tenancy agreement the monthly rent was \$2,300.00. A security deposit of \$1,150.00 and pet damage deposit of \$500.00 was paid at the start of the tenancy.

The Father passed away during the tenancy. Both NA and the Sister continued to reside in the rental unit. The landlord presented NA with a new tenancy agreement requesting that she sign it. A new tenancy agreement was signed in May, 2017 between the landlord, NA and the family's advocate JM ("JM"). JM has never resided in the rental unit and testified that she signed merely to assist the family.

Under the May, 2017 tenancy agreement the monthly rent is \$2,300.00 but does not include sewer services. LM testified that a utility bill of \$97.40 was paid in June, 2017 for sewer costs. A copy of the bill was submitted into written evidence.

The landlord issued a 2 Month Notice on May 31, 2017 which names NA and JM. The applicants filed their application to dispute the 2 Month Notice on June 13, 2017.

Analysis

Residential Tenancy Policy Guideline 13 clarifies the rights and responsibilities of co-tenants. Co-tenants are considered joint and severally liable for a tenancy. When one party passes away as the Father did in the case at hand the surviving co-tenant remains responsible for meeting the terms of the tenancy agreement.

I accept the tenant's evidence that the Sister continued to reside in the rental premises and pay rent. I find that the tenancy agreement of November, 2016 remained in effect at the time that the landlord attempted to contract with JM and NA. I find the tenancy agreement of May, 2017 to be of no effect or force as the earlier tenancy agreement remained in place. Consequently, I find that the notice to end tenancy issued under the new tenancy agreement to also be of no force or effect as it pertains to an ineffective tenancy agreement.

As I find that the tenancy agreement of May, 2017 to be of no effect I find that there is no obligation on the tenants JM and NA to pay rent or utility fees. I accept the applicants' evidence that they have made payment of \$97.40 for sewage fees. I find that the applicants are entitled to reimbursement of this amount from the landlord.

As the applicants' application was successful I find they are entitled to recover the \$100.00 filing fee for this application.

Conclusion

The 2 Month Notice is of no continuing force or effect.

The tenancy agreement of May, 2017 is of no force or effect. The tenancy agreement of November, 2016 remains in effect and this tenancy will continue under that agreement until ended in accordance with the *Act*.

I issue a monetary award in the applicants' favour in the amount of \$197.40, which includes recovery of the utility fees paid and the filing fee for this application. The applicants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 10, 2017

Residential Tenancy Branch