



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, O

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the tenants’ application for cancelation of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated June 2, 2017 (the “10 Day Notice”) and for compensation for breach of the Act, regulation, or tenancy agreement.

Both the landlord and one of the named tenants attended the hearing and were given a full opportunity to be heard, to present documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the tenants’ application and notice of hearing was not at issue.

At the onset of the hearing the tenant advised that he and his family had vacated the rental unit and withdrew the application for an order cancelling the 10 Day Notice accordingly.

Issues to be Decided

Are the tenants entitled to compensation?

Background and Evidence

The tenancy agreement was not in evidence. The parties agreed that this tenancy began on or around June 1, 2016 for a term expiring June 1, 2017, after which the tenancy became month to month. Rent was \$~~1,775.00~~ **1,725.00** monthly, due on the

first of the month. A security deposit and pet damage deposit were paid and refunded at the end of the tenancy.

It was further agreed that the landlord issued a 1 Month Notice to End Tenancy for Cause in mid-March, with an effective date of April 30. The tenants applied to dispute the 1 Month Notice, and a hearing was held on May 1. At that hearing (the file number of which is reproduced on the cover page of this decision) the parties negotiated a settlement that was documented as follows:

This is an application brought by the tenant requesting an order canceling a one-month Notice to End Tenancy; however during the conference call the parties came to the following mutual agreement:

Mutual Agreement

- The parties agree that this tenancy will continue until June 30, 2017.
- The parties agree that the tenants will vacate the rental unit on June 30, 2017 and return possession to the landlord.
- The parties agree that they will share equally the cost of the filing fee paid for today's hearing.

The parties confirmed, at the end of the hearing, that this agreement was made on a voluntary basis, and that the parties understood the nature of this full and final settlement of this matter.

It was further agreed that the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use in mid-April, and that the 2 Month Notice had an effective date of June 30, 2017.

The tenants withheld their rent for June, understanding that they were entitled to do so as a result of the 2 Month Notice and s. 51 of the Act. On June 2, 2017 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Rather than applying to dispute the 10 Day Notice the tenants paid their rent in full for June.

In his submissions the tenant said that he would not have agreed to the May 1 settlement if he had not received the 2 Month Notice, as he felt the tenancy would be ending on the effective date of that 2 Month Notice (June 30). He said that he understood that he and his family were vacating because of the landlord's intended change of use.

He further said that he understands that as soon as a 2 Month Notice is issued, compensation is owed.

According to the tenant the issue of compensation owing as a result of the 2 Month Notice was not addressed at the May 1 hearing. He said that the 2 Month Notice was addressed in the hearing only with respect to its June 30 effective date.

In response the landlord submitted that the May 1 settlement covers off the compensation owing under the 2 Month Notice. He points to the language in the agreement of "full and final settlement of this matter." The landlord also submitted that because the 2 Month Notice was discussed at the May 1 hearing, the compensation owing was also covered off. However, the landlord acknowledged that the question of compensation arising from the 2 Month Notice was not specifically discussed on May 1 and that only the effective date of that notice was raised.

The landlord also argued that by bringing this application the tenant was effectively attempting to review the May 1 settlement and suggested that the tenant might be out of time for doing so.

The landlord further said that he issued the 2 Month Notice on the advice of his realtor, who recommended that he move into the rental unit in order to prepare it for sale. He also said that he has not yet moved in, as he is attempting to rent his current home.

Analysis

Section 5(1) of the Act provides that 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 (emphasis added)."

On the language of the Act, the tenant is entitled to this amount regardless of whether the tenancy ends as a result of the 2 Month Notice.

I cannot accept that the May 1 settlement bars the tenants' claim. That agreement references only the tenants' application to cancel the 1 Month Notice. It does not reference the 2 Month Notice at all. No application with respect to the 2 Month Notice was before the arbitrator at the May 1 hearing.

My conclusion is consistent with the fact that the one month's rent owing under a 2 Month Notice was not discussed at the hearing. Both landlord and tenant acknowledged this. Had the landlord wished to ensure that the question of compensation under the 2 Month Notice was addressed in the May 1 agreement, he ought to have raised it during that hearing.

The May 1 settlement agreement records that the parties "understood the nature of this full and final settlement of this matter." Contrary to the landlord's submissions, I conclude that "matter" refers only to the tenant's application to cancel the 1 Month Notice. It does not refer to the tenancy generally or to other outstanding notices or claims. There are always other "matters" that the parties may raise by way of other applications even after the tenancy is over (applications with respect to security deposits and damage to the rental unit for instance).

One tenancy can give rise to more than one application on more than one issue. It is for this reason that I do not accept the landlord's submission that these tenants are effectively applying to review the May 1 settlement. These tenants are bringing another application related to another notice to end tenancy.

The landlord has testified that he will in fact be moving in. The tenants appear to have accepted that this is true, and I accept the tenant's testimony that he agreed to end the tenancy on the effective date of the 2 Month Notice for that reason. If the 2 Month Notice was legitimately issued and the tenancy was ended at least in part on the basis of the landlord's intention to use the rental property, then it seems reasonable that the landlord pay the required compensation.

Based on the analysis set out above, I award the tenants the amount claimed, ~~\$1,775.00.~~ **\$1,725.00.**

As the tenants' application is successful, I also grant them the cost of the filing fee in the amount of \$100.00.

Conclusion

I issue a monetary order against the landlord in the amount of ~~\$1,875.00~~**\$1,825.00**. The landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, it 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 s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: August 02, 2017

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE <u>RESIDENTIAL TENANCY ACT</u> ON August 18, 2017 AT THE PLACES INDICATED IN BOLD and UNDERLINE .
