



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 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 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with the tenant's application and evidence. The landlords did not submit written evidence for this hearing.

As the tenant confirmed receipt of the 2 Month Notice on June 26, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The tenant provided sworn testimony that this tenancy began in 2010, but a new tenancy agreement was signed for a two year fixed term tenancy to begin on April 1, 2016. A copy of this tenancy agreement was included in the tenant's evidence, which indicates a 2 year fixed term tenancy to end on April 1, 2018. Monthly rent is set at \$1,100.00, payable on the first of the month, and no security deposit was ever paid.

The landlords issued the 2 Month Notice, with an effective move-out date of September 1, 2017 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlords provided the following background for why they had decided to issue the 2 Month Notice. The landlords testified that they wanted to personally reside in the rental home, and that the tenancy agreement was a "fake agreement" that both parties entered into so that the tenant's son could play hockey in that municipality. The landlord testified that this tenancy was to end in April of 2017.

The tenant testified that this tenancy agreement was signed by both parties, and the tenancy is not "fake". The tenant testified that the landlords had agreed to this fixed term tenancy to end on April 1, 2018.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) *A tenancy ends only if one or more of the following applies:*

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 49(2) of the Act states “a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I find that the landlords failed to provide sufficient evidence to support that the written tenancy agreement was “fake”. I find the tenancy agreement to be valid, and in effect until the end of the fixed term tenancy on April 1, 2018. I find that the 2 Month Notice issued by the landlords on June 26, 2017 does not comply with section 49(2)(c) of the Act, as stated above.

Accordingly, I allow the tenant’s application to cancel the 2 Month Notice. The landlord’s 2 Month Notice, dated June 26, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the Act.

The tenant also applied for an order for the landlords to comply with the Act, specifically to allow the tenancy to continue until ended in accordance with the Act. As this issue was addressed above, no further orders will be made, and this portion of the tenant’s application is dismissed.

I find that the tenant is entitled to recovery of the filing fee.

Conclusion

The tenant’s application to cancel the landlords’ 2 Month Notice is allowed. The landlords’ 2 Month Notice, dated June 26, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed.

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: September 21, 2017

Residential Tenancy Branch