



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 tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to present evidence and to make submissions.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to recover the filing fee?

Background & Evidence

The rental unit is a 1 bedroom apartment in a multi-unit apartment complex. The tenancy began on January 1, 2017 for a 12 month fixed term expiring on December 31, 2017. The current monthly rent is \$1150.00 and is payable on the 1st day of each month.

The landlord served the tenants with a 2 Month Notice on June 26, 2016. The tenants acknowledged service of the 2 Month Notice. The effective date of the 2 Month Notice is August 31, 2017.

The tenants submit they are in a fixed term lease expiring on December 31, 2017 so the 2 Month Notice is invalid.

The landlord submits he advised his realtor at the time of purchase that he was looking into a home to move into.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. As per subsection (2)(c) 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 not earlier than the date specified as the end of the tenancy, if the tenancy agreement is a fixed term tenancy agreement.

I find the effective date on the 2 Month Notice is earlier than the date specified as the end of the tenancy as per the fixed term agreement. As such, the 2 Month Notice issued by the landlord is invalid and hereby cancelled.

As the tenants were successful in this application, I find that the tenants are entitled to recover the **\$100.00** filing fee paid for this application. The tenants may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenants' application to cancel the landlord's 2 Month Notice, dated June 26, 2017, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 27, 2017

Residential Tenancy Branch