



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNL ERP FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 1, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 20, 2017 (the "Two Month Notice");
- an order that the Landlord make emergency repairs for health or safety reasons; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves. The Landlord attended the hearing on her own behalf, as agent for the owner. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenants testified they served the Application package on the Landlord in person. The Landlord acknowledged receipt on October 8, 2017. I find the Landlord was duly served with and received the Application package on that date.

The Landlord submitted documentary evidence in response to the Tenants' Application. The Landlord testified it was served on the Tenants, in person, on three separate occasions. Although neither party could recall the dates of service, the Tenants acknowledged receipt of the documentary evidence packages. Pursuant to section 71 of the *Act*, I find the Landlord's documentary evidence was sufficiently service on the Tenants for the purposes of the *Act*.

The parties were provided with a full opportunity to present their evidence orally and in written and documentary form, and to make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord confirmed the correct spelling of her last name during the hearing. With the agreement of the parties, and pursuant to section 64 of the *Act*, I amend the Application to reflect the correct spelling of the Landlord's last name.

In addition, the Tenants confirmed that their request for an order that the Landlord make emergency repairs for health or safety reasons has been resolved and is no longer required. Accordingly, I consider this aspect of the Tenants' Application to be withdrawn.

Issues to be Determined

1. Are the Tenants entitled to an order cancelling the Two Month Notice?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed that a fixed-term tenancy was in effect from November 1, 2015, to October 31, 2017. The agreement confirmed "the rental agreement may be continued with the consent of both parties". Initially, rent was due in the amount of \$1,800.00 per month. However, as a result of improvements made to the rental property, the parties agreed to increase rent to \$2,200.00 per month, which was effective May 1, 2016. The Tenants paid a security deposit of \$900.00, which the Landlord holds.

The owner of the rental property wishes to end the tenancy. Accordingly, he issued the Two Month Notice on the following basis:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse.

[Reproduced as written.]

The parties agreed the Two Month Notice was served on and received by the Tenants on September 20, 2017.

During the hearing, the Landlord testified that the owner originally intended to return from overseas to occupy the rental property in March 2018. However, she confirmed the owner subsequently visited the rental property and was "disturbed" by the condition. In addition, the Landlord advised there had been some discussions between the owner and the Tenants about purchasing the property, which did not result in an agreement. In any event, the Landlord testified that, as a result of the perceived condition of the rental unit and the failed purchase negotiations, the owner decided to return to the property, fix it up, and sell it.

The owner of the rental property also provided written submissions confirming his intentions. They state:

I will be back in the country December 16, 2017. I do intend to sell my property and the Two Month Notice to End Tenancy for Landlord's Use of Property provides the opportunity to clean up and repair the house while living there without encumbrances such as children, animals, etc.

[Reproduced as written.]

The Tenants alleged the parties entered into a new agreement that the tenancy would continue on a month-to-month basis, and that post-dated rent cheques were provided to the owner until February 28, 2018.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to end a tenancy when the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In this case, the Landlord issued the Two Month Notice on this basis. However, I find the evidence submitted by both parties, and the written submissions of the owner, confirms the Landlord intends to occupy the rental property to prepare it for sale. This is not a valid basis for ending a tenancy. Accordingly, I find that the Two Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment at the Tenants' discretion.

Conclusion

I order that the Two Month Notice is cancelled. The tenancy will continue until otherwise 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: December 14, 2017

Residential Tenancy Branch