



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC RP FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 6, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order relating to an alleged rent increase;
- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 1, 2017 (the "Two Month Notice");
- an order that the Landlords comply with the *Act*, regulation, or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by E.L., who provided oral testimony and translation services on behalf of Y.L., who attended the hearing from China. The Landlords were represented at the hearing by M.M.

Both parties acknowledged service and receipt of the Application package and documentary evidence to be relied upon. Pursuant to section 71 of the *Act*, I find the Application package and documentary evidence of the parties was sufficiently served for the purposes of the *Act*.

No issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address during this hearing was whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' request to cancel the Two Month Notice and to recover the filing fee paid to make the Application. The Tenants are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

Issues to be Decided

- Are the Tenants entitled to an order cancelling a Two Month Notice?
- 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 by the Tenants. It confirmed the tenancy began on February 1, 2015. Although the amount of rent due was in dispute, the tenancy agreement confirmed the Tenants paid a security deposit in the amount of \$500.00.

On behalf of the Landlords, M.M. provided testimony in support of the Two Month Notice. He confirmed the Two Month Notice – a copy of which was submitted into evidence by the Tenants – was issued on the basis that the son of the Landlord B.M. is getting married in October 2018, and will move into the rental unit after some renovations and repairs are completed. On behalf of the Tenants, E.L. acknowledged receipt of the Two Month Notice on October 1, 2017.

The Tenants dispute the Two Month Notice and expressed a desire to remain in the rental unit. The Tenants allege a pattern of harassment from the Landlords, in part due to a belief the Landlords with to increase the rent, which was denied by M.M.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, 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 Landlords issued the Two Month Notice on this basis. However, section 55 of the *Act* confirms that a notice to end tenancy must comply with section 52 of the *Act*, which states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, or a notice under section 45.1 [tenant's notice: family violence or long-term care],*
- (d.1) be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

[Reproduced as written.]

The Two Month Notice was examined. Contrary to section 52 of the *Act*, the document is not signed and does not include an effective date. Accordingly, I find that the Two Month Notice is not effective to end the tenancy. The Two Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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

As noted above, the Tenants are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

Conclusion

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 18, 2017

Residential Tenancy Branch