



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OPL FF

Introduction

The original hearing of this matter addressed an application by the landlord pursuant to section 55 of the *Act* for an Order of Possession for Landlord's use of property. At a hearing on March 16, 2018, only the landlord appeared. The arbitrator at that hearing, adjourned the matter to March 23, 2018 and joined it with applications to cancel the landlord's 2 Month Notice to End Tenancy.

This hearing was reconvened in response to an application by both parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Tenants requested:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 49 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- an Order suspending or setting conditions on the landlord's right to enter the rental unit pursuant to section 70 of the *Act*.

The Landlord requested:

- an Order of Possession for Landlord's Use of Property pursuant to section 55 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Appearing for the tenants were tenant J.N., tenant R.S. and tenant R.F., along with their agent S.S. Appearing for the landlord was L.S.Z. (the "landlord") and his translator E.Z.

All parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Tenant J.N. confirmed receipt of a 2 Month Notice to End Tenancy but explained that it was blank in the section where a tenant's name was meant to be located. A copy of this document was supplied as part of her evidentiary package. Tenant R.S. said he received a copy of the landlord's 2 Month Notice but that the tenants name contained on the 2 Month Notice was incorrect.

Both parties confirmed receipt of each other's applications for dispute resolution.

Issue(s) to be Decided

Can the tenants cancel the landlord's 2 Month Notice? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord explained to the hearing, that he had been living with a friend for the past two years and now required use of the rental home as his friend was moving on from the home which they currently occupied. The landlord said that he had no other place to live and for this reason issued a 2 Month Notice to End Tenancy to the tenants. The landlord argued that his ex-wife, S.S. had illegally entered into any rental agreements with the tenants and he wished for an Order of Possession to be issued in his favour.

The tenants' agent, S.S. said that she was in fact the true landlord and co-owner, and that she had no desire to see the tenants vacate the property. S.S. said that she and the landlord had previously been married, however, they had since split up and she maintained control of the home because the landlord was incarcerated and unable to attend to the property.

Tenant J.N. supplied a copy of tenancy agreement as part of her evidentiary package. This document showed that a tenancy agreement was signed by landlord S.S. and tenant J.N. on November 26, 2017. Rent is \$900.00 per month, and a security deposit of \$450.00 collected at the outset of the tenancy continues to be held by S.S. Tenant J.N. said that she pays rent every month to S.S.

A copy of a tenancy agreement supplied to the hearing by the landlord shows that another tenancy agreement was entered into between S.S., and tenants R.S. and R.F.

This tenancy began on July 1, 2017 with rent set at \$2,200.00 per month. A security deposit of \$1,100.00 and a pet deposit of \$600.00 were collected by S.S. at the outset of the tenancy and continued to be held by S.S.

Analysis

Section 52 of the *Act* states the following:

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** 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, and
- (e) **when given by a landlord**, be in the approved form.

After reviewing the evidence and considering the submissions of the party, I find that L.S.Z. is not the landlord in the tenancies that are the subject of this hearing. S.S. is the named landlord and the signatory to these tenancy agreements, and that the 2 Month Notices to End Tenancy for Landlord's use are therefore invalid. S.S. explained that she had no desire to see the tenants vacate the rental unit and at no point issued any Notices to End Tenancy. I find that the landlord named on the application for dispute has no standing under the *Act* to issue a Notice to End Tenancy. For these reasons, I dismiss the L.S.Z.'s 2 Month Notices to End Tenancy. These tenancies shall continue until they are ended in accordance with the *Act*.

As the landlord named on the application for dispute has no standing under the *Act*, the remaining portions of the tenants' application for dispute are dismissed.

Conclusion

The landlord's 2 Month Notice issued to tenant J.N. and R.F. is dismissed.

The tenants' applications for Orders suspending conditions on the landlord's right to enter the property are dismissed.

The tenants' applications for a return of the filling fees are 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: March 26, 2018

Residential Tenancy Branch