



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenants' 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; and
- authorization to recover the filing fee for this application from the landlord, 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 landlord confirmed receipt of the tenants' application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit written evidence for this hearing.

As the tenant confirmed receipt of the 2 Month Notice on January 29, 2018, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

Issues to be Decided

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 for this application from the landlord?

Background and Evidence

The tenant AC provided sworn testimony that this 1 year fixed term tenancy began on October 15, 2017. A copy of this tenancy agreement was included in the tenants' evidence, which indicates a 1 year fixed term tenancy to end on October 15, 2018. Monthly rent is set at \$1,500.00, payable on the first of the month.

The landlord issued the 2 Month Notice on January 29, 2018, with an effective move-out date of March 31, 2018 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 landlord provided the following background for why she had decided to issue the 2 Month Notice. The landlord testified that the named landlord on the tenancy agreement was her ex-partner, and now that the relationship has dissolved she was in need of housing. She testified that wanted to personally reside in the rental home, and that the tenancy agreement was signed after she had served the 2 Month Notice, although she did not have evidence to support this.

The tenants testified that this tenancy agreement was signed by both parties at the beginning of the tenancy, as dated on the agreement, and that this was a fixed term tenancy.

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 landlord failed to provide sufficient evidence to support that the written tenancy agreement was signed after the 2 Month Notice was issued. I find the tenancy agreement to be valid, and in effect until the end of the fixed term tenancy on October 15, 2018. I find that the 2 Month Notice issued by the landlord on January 29, 2018 does not comply with section 49(2)(c) of the *Act*, as stated above.

Accordingly, I allow the tenants' application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated January 29, 2018 is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenants are entitled to recovery of the filing fee.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated January 29, 2018, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenants 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 tenants are 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.

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: April 11, 2018

Residential Tenancy Branch