



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated January 30, 2018 (“2 Month Notice”) and to recover the cost of the filing fee.

The tenant, legal counsel for the tenant (“counsel”), the landlord and the son/agent of the landlord (“agent”) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties confirmed that they did not have any witnesses to present at the hearing.

The agent testified that the landlord did not submit evidence in response to the tenant’s application. The agent also confirmed that he did receive the tenant’s documentary evidence and had the opportunity to review it prior to the hearing.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a tenancy agreement began on or about November 1, 2004. The tenant testified that the tenancy was a month to month tenancy. A copy of the tenancy agreement was not submitted in evidence.

The parties agreed that the landlord served the tenant with the 2 Month Notice dated January 30, 2018 via placing the 2 Month Notice under the tenant's door. The tenant disputed the 2 Month Notice on February 9, 2018. The effective vacancy date listed on the 2 Month Notice indicates March 31, 2018.

The parties agreed that the 2 Month Notice states the one reason as "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant." The agent confirmed that the landlord did not submit any documentary evidence in support of the 2 Month Notice. The agent testified that he called the city and someone on the phone confirmed that they did not require permits for the work involved. The agent did not have any supporting documentary evidence such a letter from the city to support his testimony.

The tenant disputes that the 2 Month Notice is valid and has requested that the 2 Month Notice be cancelled.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

There is no dispute that the 2 Month Notice was served on January 31, 2018. The effective vacancy date listed on the 2 Month Notice has passed which was March 31, 2018. The tenant disputed the 2 Month Notice on February 9, 2018 which I find is within the 15 day timeline provided for under section 49 of the *Act* to dispute a 2 Month Notice. When a tenant disputes a 2 Month Notice, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to support the notice to end tenancy, the notice to end tenancy will be cancelled.

The agent confirmed that the landlord did not submit any documentary evidence to support that the landlord was advised that “no permits were required to do the work” which was listed on the 2 Month Notice as either renovate the rental unit in a method that required the rental unit to be vacant as indicated on the 2 Month Notice or to demolish the rental unit. The tenant has been in the rental unit for approximately fourteen years.

I find the landlord provided insufficient evidence to prove that no permits are required to renovate or demolish the rental unit and that insufficient evidence was provided to support that either plan would require the tenant to be vacate the rental unit. At the very least, I would expect something in writing from the city indicating that no permits are required and documented plans regarding the specific proposed work that would require the rental unit to be vacant. Instead, the landlord had no witnesses present, no building plans submitted, and nothing in writing submitted regarding building permit requirements. Therefore, I find the landlord has failed to meet the burden of proof and I **cancel** the 2 Month Notice. The 2 Month Notice is of no force or effect.

I order the tenancy to continue until ended in accordance with the *Act*.

As the tenant’s application was successful, and pursuant to section 72 of the *Act*, I grant the tenant a one-time rent reduction of **\$100.00** from a future month’s rent.

I caution the landlord from issuing further invalid 2 Month Notices. Should the landlord continue to do so, the landlord could be recommended for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under the *Act* is up to \$5,000.00 per day.

Conclusion

The 2 Month Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the *Act*.

As the tenant’s application was successful, and pursuant to section 72 of the *Act*, the tenant has been granted a one-time rent reduction of \$100.00 from a future month’s rent.

The landlord has also been cautioned administrative penalties under the *Act* as described above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 18, 2018

Residential Tenancy Branch