



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

On February 23, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property (“the Two Month Notice”) and for the Landlord to comply with the Act.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and 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.

Issues to be Decided

- Should the 2 Month Notice to End Tenancy dated February 22, 2018, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Tenants testified that their tenancy began in December 2015, and a one year fixed term tenancy that continued thereafter as a month to month tenancy. The rental property was sold in July 2017, and the new owner wanted to raise the rent or have the Tenants enter into a 6 month fixed term tenancy. The Landlord and Tenant testified that they entered into a six month fixed term tenancy that began on August 1, 2017, to

continue until March 1, 2018. Rent in the amount of \$1,100.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the original Landlord a security deposit in the amount of \$1,100.00 and a pet damage deposit in the amount of \$200.00. The Tenants provided a copy of the tenancy agreement.

The Landlord issued the Tenant a 2 Month Notice dated February 22, 2018. The reason for ending the tenancy on the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenants disputed the 2 Month Notice within the require time period.

The Landlord testified that his parents have moved here from out of province and are planning to move into the rental unit.

The Tenants testified that they have changed their minds about disputing the 2 Month Notice. The Tenants testified that they are accepting the 2 Month Notice to end tenancy and will be vacating the unit on the effective date of the Notice.

The Tenants testified that they did not pay the rent owing for May 2018, as they are entitled one month's rent in compensation for accepting the 2 Month Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants' application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 22, 2018, is dismissed in its entirety.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

The Landlord was asked whether he wanted to receive an order of possession for the rental unit effective May 31, 2018, and he declined. The Landlord was informed that he may need the order of possession should the Tenants fail to vacate the rental unit; however, the Landlord indicated he did not want the order of possession.

Section 51 of the Act states that a Tenant who receives a notice to end a tenancy for Landlord's use of property is entitled to receive from the Landlord on or before the effective date of the Landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. A Tenant may withhold the amount from the last month's rent. Since the Tenants have accepted the 2 Month Notice, I find that the Tenants are entitled to withhold payment of May 2018, rent.

Conclusion

The Tenant's application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 22, 2018, is dismissed.

The tenancy ends at 1:00 pm on May 31, 2018; the effective date of the 2 Month Notice.

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: May 09, 2018

Residential Tenancy Branch