



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL LRE FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

While the tenant HK and his advocate LM attended the hearing by way of conference call, the landlords did not. I waited until 11:11 a.m. to enable the landlords to participate in this scheduled hearing for 11:00 a.m. The tenant HK and his advocate LM were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants provided sworn, undisputed testimony that they had personally served the landlords with their application for dispute resolution hearing package ("Application") on March 8, 2018 by way of registered mail. LM testified in the hearing that the packages were sent to the address on the 2 Month Notice. The tenants included the tracking number as well as the proof of service to that address in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlords were deemed served with the tenants' application and evidence on March 13, 2018, five days after mailing. The landlords did not submit any written evidence for this hearing.

The tenants acknowledged receipt of the 2 Month Notice dated February 25, 2018, which was posted on their door. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 1 Month Notice on February 25, 2018.

The tenants requested an amendment to their application to remove a party indicated as a landlord on their application, as the tenants testified that one of the parties is not a landlord. Accordingly, the tenants' application was amended to reflect the name of the two named landlords.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order to suspend or set conditions on the landlords' right to enter their rental suite?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began sometime in 2005. Monthly rent is currently set at \$1,450.00, payable on the first day of each month.

The landlords issued the 2 Month Notice on February 25, 2018 for the following reason:

- the Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants are disputing the 2 Month Notice, testifying that the 2 Month Notice was not issued in good faith. The tenants testified that the landlords do not have the necessary permits or approvals required by law to repair or demolish the rental unit in a manner that requires the unit to be vacant.

Counsel for the tenants indicated in the hearing that at this time they do not require an order suspending or setting conditions on the landlords' right to enter the rental unit. Counsel stated that the reason they had applied for this order was that the landlords have not been in compliance with the *Act* when giving the tenants notice to enter their rental unit.

Analysis

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends in good faith, to...renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants are disputing the 2 Month Notice issued to them and they gave undisputed testimony that the landlords have issued the 2 Month Notice in good faith.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

In the absence of any evidence or submissions from the landlords in this hearing, I find that the landlords have not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 2 Month Notice. Under these circumstances, I am allowing the tenants' application to cancel the landlords' 2 Month Notice. The landlords' 2 Month Notice, dated February 25, 2018 is hereby cancelled and is of no force and effect. This tenancy continues until it is ended in accordance with the *Act* and tenancy agreement.

The tenants withdrew their application for an order suspending or setting conditions on the landlords' right to enter their rental unit. The tenants testified that the landlords have failed to provide proper notice as indicated by section 29(1) of the *Act*.

I remind the landlords of their obligations under section 29(1) of the Act, as stated below.

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

I find the tenants are entitled to recover the filing fee for this application.

Conclusion

The tenants' application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated February 25, 2018 is cancelled and of no force or

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

The tenants withdrew their application or an order to suspend or set conditions on the landlords' right to enter their rental unit.

The find the tenants are entitled to recover the cost of the filing fee for this application. I allow the tenants to implement a monetary award of \$100.00, 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 landlords must be served with **this Order** as soon as possible. Should the landlords 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: May 24, 2018

Residential Tenancy Branch