



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing, gave affirmed testimony, and also represented the other tenant. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended the call. The tenant testified that the landlord was personally served and again served by registered mail with the Tenant's Application for Dispute Resolution and notice of this hearing on April 11, 2018. The tenant was given the opportunity to provide proof of such service after the hearing had concluded. I have now received a Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Background and Evidence

The tenant testified that this month-to-month tenancy began in March or April, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$988.00 is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property by posting it to the door of the rental unit on March 31, 2018. A copy has been provided for this hearing and it is dated March 31, 2018 and contains an effective date of vacancy of May 31, 2018. The reason for issuing it states: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The tenant testified that the rental home has not been sold and 2 days before this hearing, a real estate agent contacted the tenant to give notice to show the rental unit to a prospective purchaser. The tenants have also provided a copy of an advertisement for an Open House to show the rental home to other prospective purchasers. The rental home has not been sold.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the landlord has not attended the hearing to establish that, and I accept the undisputed testimony and evidence of the tenant that all of the conditions for the sale of the rental home have not been satisfied, and a landlord cannot end a tenancy until it has sold and conditions have been satisfied. Therefore, I cancel the Notice and the tenancy continues.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlord in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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 23, 2018

Residential Tenancy Branch