



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REI-MAR INVESTMENTS LTD.
MANYTREE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL OLC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for: cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49; an order requiring the landlord to comply with the *Act*, other applicable legislation and the tenancy agreement pursuant to section 62; 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 an opportunity to be heard, to present their affirmed testimony, and to make submissions. One tenant ("Tenant JS") attended on behalf of both tenants. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Preliminary Matter

At the outset of the hearing, the landlord stated that she would not rely on the 2 Month Notice dated March 13, 2018. When a tenant applies to cancel a Notice to End Tenancy (as the tenants have done here), the burden of proof falls on the landlord to justify their Notice to End Tenancy. Therefore, as the landlord gave no evidence in support of the 2 Month Notice, the tenants' application to cancel that notice is granted and the tenancy shall continue.

Issue(s) to be Decided

Are the tenants entitled to an order that the landlord comply with the Act, Residential Tenancy Regulation and/or the residential tenancy agreement between the parties? Are the tenants entitled to recover their \$100.00 filing fee?

Background and Evidence

This tenancy began on June 1, 2011 with a monthly rental amount of \$1600.00 payable on the first of each month. The landlord continues to hold a \$800.00 security deposit paid by the tenants at the outset of this tenancy (May 31, 2011). On March 13, 2018, the landlord issued a 2 Month Notice to End Tenancy to the tenants by registered mail. Tenant JS testified that this is the fifth Notice to End Tenancy that the tenants have been issued by the current landlord. The tenants sought to cancel the most recent Notice to End Tenancy. As stated in the preliminary matters section above, the tenants' application was granted as the landlord did not oppose the application.

Within their evidentiary materials, the tenants provided copies of 3 previous Notices to End Tenancy and four previous dispute resolution hearing decisions. Tenant JS testified that the landlord's repeated, previous attempts to end this tenancy show that the landlord is motivated to end their long term tenancy for other reasons than those provided on the landlord's Notices to End Tenancy. Tenant JS testified that the landlord is attempting to end their tenancy in order to increase the rent for this unit. Tenant JS referred to the wording in the previous Residential Tenancy Branch ("RTB") decisions that each made findings that: the landlord had an ulterior motive to end this tenancy (February 2014); that the corporate landlord could not issue a 2 Month Notice under the grounds that a close family member will move into the rental unit; and that the landlord put the wrong reason for eviction on a Notice to End Tenancy.

The landlord argued that she has a right to issue Notices to End Tenancy. She denied that there was an ulterior motive in issuing any of the Notices to End Tenancy however, she acknowledges that her previous notices to end tenancy issued to the tenant were unsuccessful at hearing. She testified that the only reason she did not rely on the 2 Month Notice issued on March 31, 2018 (to be addressed at this hearing) is that the prospective tenant scheduled to move in, made other living arrangements after being notified of the extensive time prior to the scheduled hearing of this matter. The tenant applied for dispute resolution on March 19, 2018 and this hearing took place on June 5, 2018. The effective date of the landlord's most recent 2 Month Notice was May 31, 2018. The tenants sought an Order that the landlord comply with the Act by ceasing to

issue Notices to End Tenancy. The tenants also sought to recover the filing fee for this application. The landlord argued that she should not be responsible for the tenants' filing fee cost but did not provide reasons at this hearing to explain her position.

Tenant JS referred to documents submitted for this hearing within the tenants' evidentiary materials that stated the tenants wanted a monetary order against the landlord as a result of a loss of quiet enjoyment resulting from the ongoing issuance of Notices to End Tenancy by the landlord. The tenants did not, however, amend their application to include a formal request for a monetary order against the landlord.

Analysis

As stated in the preliminary matters section at the start of this decision, the tenants' application to cancel the landlord's March 13, 2018 Two Month Notice to End Tenancy is granted. The tenancy shall continue.

Tenant JS argued that the tenants should be entitled to a monetary order against the landlord as a result of a loss of quiet enjoyment. He testified that the ongoing issuance of Notices to End Tenancy by the landlord has disrupted their tenancy and their daily lives. However, the tenants did not amend their application to include a formal request for a monetary order against the landlord. The dispute resolution hearing process must meet the requirements of procedural fairness both preceding and during a dispute resolution hearing. In this case, the landlord was not notified that the tenants sought a monetary amount against her and was therefore not prepared to respond to this request. Therefore, I dismiss the tenants' application for a monetary order for loss of quiet enjoyment, but grant them leave to reapply.

The tenants provided undisputed evidence to show that the landlord has issued several Notices to End Tenancy to the tenants. The tenants have provided evidence that RTB arbitrators have found previous notices to end tenancy to be unjustified. The landlord withdrew the latest Notice to End Tenancy issued to the tenants at this hearing, and not prior to this hearing. I refer the landlord to Residential Tenancy Policy Guidelines No. 2 and No. 50 that address ending a tenancy for Landlord's Use. I also refer the landlord to Part 4 of the Residential Tenancy Act regarding ending a tenancy as well as the Fact Sheets available to parties to ensure they are aware of (and in compliance with) both their rights and obligations under the Act.

In the circumstances, I find that the tenants are entitled to an order that the landlord comply with the *Act*. I issue an order that the landlord comply with the *Act*, particularly

sections 44 through 57 (Part 4) of the *Act* regarding ending a tenancy. The landlord is entitled to issue Notices to End Tenancy and the tenants are entitled to dispute them within the allowable time limits. However, for the consideration and reference of both parties, I refer the parties to section 28 of the *Act* (reproduced here) and Residential Tenancy Policy Guideline No. 6 that explain a tenant's right to quiet enjoyment,

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

While Tenant JS indicated that he sought a monetary order against the landlord for lack of quiet enjoyment, the tenants did not formally apply for a monetary order. I decline to consider issuing an award for loss of quiet enjoyment to the tenants because they have failed to make a formal application to do so. I caution the landlord to ensure that she is in compliance with the *Act* in her interactions with the tenants. The tenants have leave to make an application with respect to monetary compensation against the landlord.

The tenants sought to recover the filing fee for this application. The landlord issued a Notice to End Tenancy advising the tenants that they were required to vacate by May 31, 2018. The landlord did not provide evidence to justify the Notice to End Tenancy and testified that she did not intend to rely on the Notice. As the tenants were successful in this application to cancel this Notice issued by the landlord on March 13, 2018 and address the landlord's compliance with the *Act* in issuing Notices, I find that the tenants are entitled to recover the \$100.00 filing fee for this application.

Conclusion

I cancel the landlord's Two Month Notice to End Tenancy for Landlord's Use dated March 13, 2018. The tenancy shall continue.

I order that the landlord comply with the *Residential Tenancy Act* generally.

I order that the landlord comply with sections 44-57 of the *Residential Tenancy Act*.

I issue a monetary order to the tenants in the amount of \$100.00 to recover the filing fee for this application. The tenants are provided with this Order in the above terms and the

landlord must be served with this Order as soon as possible. Should the landlord 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: June 28, 2018

Residential Tenancy Branch