



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON WEST COAST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as were both Tenants. The Landlord confirmed that they were served with the Notice of Dispute Resolution Proceeding package, along with copies of the Tenants’ evidence. The Landlord did not submit any evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Issue to be Decided

Should the Two Month Notice to End Tenancy for Landlord’s Use of Property be set aside?

If the Two Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on June 1, 2016. Monthly rent was increased to \$2,480.00 during the tenancy. A security deposit was paid at the outset of the tenancy and has been returned to the Tenants as they moved out of the rental unit on July 4, 2018.

The Landlord served the Tenants with a Two Month Notice on May 1, 2018 by registered mail. The Tenants confirmed that they received the Two Month Notice on May 4, 2018.

The Tenants applied to dispute the Two Month Notice on May 22, 2018 and moved out of the rental unit on July 4, 2018, while waiting for the Dispute Resolution hearing.

The Tenants submitted evidence of the real estate listing for the home and testified that it was for sale at the time when the Two Month Notice was served to them. The agent for the Landlord testified that the owners of the property had advised her the house was no longer for sale, but confirmed during the hearing that it appeared to still be listed for sale.

The Landlord provided testimony that the owners of the property intended to move in to the rental unit and that it is still their intention to occupy the property, regardless of the home being for sale.

The Tenants testified that the home is still for sale and it is their understanding that the home is currently empty with no one living in it, meaning that the property owners are not using the home for the purpose stated on the Two Month Notice.

The Tenants provided testimony that they received one month of rent compensation pursuant to Section 51(1) of the *Act*.

Analysis

As the Tenants applied to cancel/dispute a Two Month Notice, but have already moved out, I find there is no longer a Two Month Notice in dispute. Instead, I find that the Tenants accepted the Two Month Notice by vacating the rental unit.

During the hearing, the Tenants expressed that they believed they were applying for compensation due to the rental unit not being used by the Landlord or a family member of the Landlord. They also expressed that it was their understanding that they had to vacate the rental unit due to the notice, regardless of whether they had applied to dispute the notice or not.

As the Tenants did not apply for compensation, but instead to cancel a notice that is no longer in effect, the hearing was not able to continue. Although the Tenants intended to apply for compensation, they did not file their application for compensation.

A party has the right to know all of the claims against them and to be provided with the opportunity to submit evidence and testimony in response to the claims.

As the Landlord was not aware that the Tenants were seeking compensation due to a compensation claim not being listed on the Application for Dispute Resolution, it would not be procedurally fair to amend the Application and proceed with the Tenants' claim for compensation.

The Tenants are able to file a new application for compensation under Section 51 of the *Act* if they believe that the Landlord/property owner is not using the property for the purpose stated on the Two Month Notice that ended the tenancy. Both parties will then have an opportunity to submit evidence and attend the hearing to provide testimony in response to the claims.

As I determine that the Two Month Notice dated May 1, 2018 is no longer in dispute as the tenancy has ended, I dismiss the Tenants' application to dispute the notice without leave to reapply.

As the application is dismissed, I decline to award the recovery of the filing fee to the Tenants.

Conclusion

The Tenants' application is dismissed in its entirety without leave to reapply.

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: July 19, 2018

Residential Tenancy Branch