



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting a cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property. They also request an Order requiring the Landlord to comply with the Act, regulations and tenancy agreement. Finally, the Tenants request an order for payment of the filing fee.

The Landlord appeared for the scheduled hearing, along with his realtor who was called as a witness; the Tenants had their son represent them at the hearing (hereinafter referred to as “Tenant”). I find that the notice of hearing was properly served and that evidence was submitted by all parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Are the Tenants entitled to a cancellation of the Two Month Notice to End Tenancy, pursuant to section 49 of the *Residential Tenancy Act* (“Act”)?

Are the Tenants entitled to an Order requiring the Landlord to comply with the Act, regulations and tenancy agreement, pursuant to section 62 of the Act?

Are the Tenants entitled to payment of the \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began July 1, 2017 with monthly rent of \$1,200.00; a security deposit of \$600.00 was paid. Approximately two months ago, the property was sold to a new owner, who is the named Landlord/Respondent in this Application. The Tenant claims that the Landlord demanded payment of a new security deposit and a new tenancy agreement, which the Tenants refused; the Landlord admits that he wanted to enter into a new tenancy agreement, but that there was no mention of a new security deposit.

The Tenant states that the Landlord, who was residing upstairs, began making regular and repeated complaints about their cooking and demanded that they stop cooking their regular meals and traditional meat dishes. Their passport documents went missing, and they later learned the Landlord's wife had them in her possession. They are concerned that mail is missing and that the Landlord comes and goes from their rental unit without prior notice or permission. The Tenant also claims that the Landlord has not provided a June rent receipt despite repeated requests.

The Tenant states that around April 30, 2017, they were served with a Two Month Notice to End Tenancy with an effective date of June 30th. The Tenant argued that although the notice stated it was because the Landlord's family planned to occupy the suite, he believes it is due to their refusal to sign a new tenancy agreement. The Tenant asks that the Notice be cancelled and that the Landlord be ordered to comply with the Act and regulations. He also claims that there was no credit or payment of one month's rent, which is a requirement when terminating a tenancy for Landlord's use.

The Landlord denied the allegations made by the Tenant and submitted an airline itinerary booked July 13, 2018 showing his wife's parents are traveling from Toronto to Vancouver and plan to stay with them. No other documentary evidence was submitted by the Landlord. His position is that the Tenants refused to sign a new agreement; he went on to argue that he has no room upstairs to house his in-laws and that they arrive early July and need the basement suite. He claims that all the other tenants residing in the basement were also asked to vacate. He denies having taken any documents/mail or having complained to the Tenants with respect to their cooking; he did not deny his failure to provide a rent receipt.

The Landlord called his realtor as his witness, who testified that there was nothing in the sales documents with respect to the rent or security deposit; no credit was given and none was requested. He states that the Landlord asked him for a copy of a new tenancy agreement which he attempted to negotiate with the Tenants; he was told that the Tenants refused to sign it, so he then provided a Two Month Notice to End Tenancy and told the Landlord that he could evict the Tenants so that the in-laws had a place to stay.

Analysis

Under section 49 of the Act, a landlord may serve a Two Month Notice to End Tenancy if the landlord or a close family member intends to occupy the premises. This notice must comply with section 52 of the Act in form and content. The burden of proof is on the Landlord to prove that the Notice to End Tenancy was properly completed and served. The Landlord and Tenant failed to submit a copy of the notice into evidence and therefore I cannot determine if the notice is compliant. Even if the notice was compliant in form and in content, it is probable that it was not issued in good faith as the Landlord initially sought to affirm the tenancy with a new agreement and did not arrange travel for his in-laws until after the Tenants had filed this dispute application.

Accordingly, I must cancel the Notice to End Tenancy which was served on the Tenants on April 30, 2018 and the tenancy shall continue until terminated with proper notice by either party.

Under section 62 of the Act, an Order can be made that a landlord comply with the Act, regulations or tenancy agreement. The Tenants claim that the Landlord unreasonably restricts their use of the premises by demanding that they stop cooking meals and meat; the Tenants also state that the Landlord seized their passports and enters the premises without notice or prior consent, interferes with mail delivery and refuses to provide rent receipts. The Landlord disputes most of these claims.

Under section 28 of the Act, a tenant is entitled to quiet use and enjoyment of the rental property:

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.

In this instance, the Tenants are arguing that their use of the rental unit is being interfered with by the Landlord, and that they were being evicted for refusing to pay a security deposit and sign a new tenancy agreement.

Under section 93 of the Act, the obligations of a landlord with respect to a security deposit runs with the land; in other words, the Tenants are correct in their argument that their \$600.00 security deposit continues to be held as against the rental unit, under the new owner. The new owner had the option of negotiating a credit for the amount of that security deposit when he purchased the property, but chose not to do so. The existing tenancy agreement was assigned to the new owner when he took possession of the premises, as there was no condition in the sales agreement to have the Tenants removed. There is no requirement to sign a new tenancy agreement as the new Landlord assumes the existing tenancy agreement and must abide by its terms, unless both parties voluntarily consent to a new agreement.

I find that the Landlord is required to comply with the terms and conditions of the original tenancy agreement signed with the Tenants on July 1, 2017, which continues on a month-to-month basis. Furthermore, the \$600.00 security deposit is deemed to be held in trust by the Landlord on behalf of the Tenants, and will be managed in accordance with the Act. The Landlord is required to provide rent receipts upon receipt of payment of rent each month, and is reminded that the Tenants are entitled to quiet use and enjoyment of the rental unit, free from unreasonable interference. Their mail and personal belongings are not to be handled by the Landlord or his family, and the Landlord is reminded that proper notice must be given to enter the Tenants' rented unit. The Tenants are permitted to cook meals and use their space as their home.

As the Tenants were successful in their Application, I am awarding the filing fee of \$100.00, which shall be credited against their monthly rent payment.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property served April 30, 2018 is hereby cancelled and of no force or effect. The tenancy shall continue on a month-to-month basis until cancelled by either party with proper notice.

The Landlord shall credit the sum of \$100.00 against the Tenants' next rent payment. The Landlord shall provide rent receipts to the Tenants upon receipt of payment.

The Landlord shall not unreasonably interfere with the Tenants' use and enjoyment of the rental unit.

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 4, 2018

Residential Tenancy Branch