



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

The Landlord and legal counsel for the Landlord were present for the duration of the teleconference hearing, as was one of the Tenants. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package by registered mail. The Tenant confirmed receipt of copies of the Landlord’s evidence, served in person. The Tenant did not submit any evidence prior to the hearing.

The 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 to End Tenancy for Landlord’s Use of Property is upheld, is the Landlord entitled to an Order of Possession?

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

Background and Evidence

Legal counsel for the Landlord provided testimony for the Landlord in consultation with the Landlord. The Landlord purchased the property where the rental unit is located in 2012 with the tenancy already in place. Current monthly rent is \$900.00. The Landlord stated that a security deposit was not provided to him from the previous home owners/landlords. The Tenant testified that a security deposit in the amount of \$325.00 was paid to the original landlords at the outset of the tenancy.

Counsel for the Landlord testified that the Landlord's son has intentions to move into the rental unit. Oral notice was provided to the Tenants in December 2017 that the son would need the unit in January 2018. The Landlord stated that the Tenant needed to travel to India and asked to have until she returned in March 2018 to discuss vacating the unit.

On or around April 10, 2018, the Landlord received a letter from one of the Tenants requesting official written notice to end the tenancy. The Landlord provided the Two Month Notice to the Tenants on May 7, 2018 by registered mail. The Landlord submitted the Two Month Notice and the registered mail tracking information that shows the notice was received on May 10, 2018.

The Landlord provided testimony that his son is currently residing in Alberta as he is waiting for the rental unit to be vacant before making arrangements to move to BC and into the rental unit. The Landlord also stated that after receiving the Two Month Notice, the Tenants asked to stay beyond the effective end of tenancy date of August 1, 2018.

The Landlord told the Tenants they could stay for another two months, but due to the extra cost his son would incur from continuing to pay for a place in Alberta, the Landlord would need to charge \$300.00 more per month as compensation. The Landlord stated that this was not a rent increase, but compensation for the additional expenses incurred and to support the Tenants by providing more time to find another rental unit. The Landlord's son and his family have plans to move in as soon as possible.

The Tenant testified that she believes the Landlord wants to increase the rent and since he can only provide rent increases in accordance with the *Act*, he has provided notice to end the tenancy so he can re-rent the unit for higher.

The Tenant stated that she did not receive oral notice regarding the tenancy ending until January when she paid January rent. After she returned from India, she requested an official written notice. The Tenant confirmed receipt of the Two Month Notice on May 10, 2018.

The Tenant testified that after the Two Month Notice was served, the Landlord asked her to pay \$1,200.00 in monthly rent instead of \$900.00. The Tenant stated that the Landlord also told her that the other basement suites in the area were all renting for \$1,200.00 per month.

The Tenant advised the Landlord of the amount he was able to legally increase the rent by, but stated that she never received official notice of a rent increase. She also stated that she was told that if she agreed to a rent increase, then she could stay residing in the rental unit.

The Tenant testified that she does not believe that the Landlord's son needs to move into the rental unit as he moved back to Alberta after residing in BC for a few months last year.

Both the Tenant and the Landlord confirmed that one month of rent compensation pursuant to Section 51(1) of the *Act* has not yet been provided to the Tenants.

Analysis

Residential Tenancy Policy Guideline 2: Landlord's Use of Property states that a landlord must act in 'good faith' when issuing a notice to end tenancy due to needing the rental unit for their own use or for a family member's use. This policy guideline further explains that good faith is a party acting honestly in their intentions to do what the notice states.

As such, when a tenant applies to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, I find the main issue the determination of whether the landlord intends to use the property as stated on the notice to end the tenancy.

However, regardless of whether the Landlord's intentions were undertaken in good faith when the Two Month Notice was issued, I refer to Section 52 of the *Act*:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Upon review of the Two Month Notice which was submitted into evidence by the Landlord, I find that it was neither dated, nor signed by the Landlord in accordance with Section 52(a) of the *Act*. While the Landlord's name is on the form, and the date it was signed is stated as May 2018, the day in May 2018 is not specified and the Landlord's signature is not included on the first page.

As such, regardless of whether the reasons for the Two Month Notice are valid, I find that the notice is not effective, pursuant to Section 52.

As the Two Month Notice is determined to not be effective, the notice is hereby cancelled and is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenants applied to cancel a Two Month Notice that was found to be ineffective, I award them the recovery of the filing fee paid for this application in the amount of \$100.00 pursuant to Section 72 of the *Act*. The Tenants may deduct \$100.00 from their next monthly rent payment.

Conclusion

Pursuant to Section 52 of the *Act*, the Two Month Notice is found to be ineffective and is therefore of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenants may deduct \$100.00 one time from their next monthly rent payment for the recovery of the filing fee paid for this application, pursuant to Section 72 of the *Act*.

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 16, 2018

Residential Tenancy Branch