



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FFT, RP, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 3, 2018 (the “Application”). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated May 31, 2018 (the “Notice”). The Tenants also applied to dispute a rent increase above the amount allowed by law, for an order that repairs be made to the rental unit, to reduce the rent for repairs, services or facilities agreed upon but not provided and for reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord also appeared. I explained the hearing process to the parties who did not have questions when asked. All parties provided affirmed testimony.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an Application for Dispute Resolution must be related to each other and that arbitrators may dismiss unrelated claims with or without leave to reapply.

I told the parties at the outset that the dispute of the Notice is the main issue before me and asked the Tenants how the remaining issues are related to the dispute of the Notice. I heard from Tenant S.G. on this issue. I determined that the remaining issues are not related to the dispute of the Notice and severed these issues. All issues raised in the Application, other than the dispute of the Notice, are dismissed with leave to re-apply.

The Tenants had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and Tenants’ evidence.

The Landlord confirmed he received the hearing package and raised no issues in this regard. The Landlord testified that he did not receive the Tenants' evidence other than by email and that he was unable to open some of the attachments. The Tenants testified that they served the evidence on the Landlord by registered mail to his address for service noted on the Notice. The Landlord did not take issue with this but said he did not receive the evidence because he was not at the address when it was sent.

I asked the Landlord what remedy he was seeking and whether he was seeking an adjournment. The Landlord was unable to provide an answer to this. I told the parties it was my view the Landlord was not taking issue with the testimony of the Tenants that they served the evidence on him in accordance with the *Residential Tenancy Act* (the "*Act*") and this is all they were required to do.

I told the parties I noted some issues with the Application and that I would proceed and leave it to the Landlord to raise the issue of an adjournment if he felt one was necessary. The Landlord said he would prefer to deal with the matter today. The Landlord did not raise the issue of an adjournment during the remainder of the hearing.

A written tenancy agreement had been submitted as evidence. I reviewed this with the parties. It is between the Landlord and Tenants regarding the rental unit. It started July 1, 2017 and is for a fixed term of three years ending June 30, 2020. It is signed by the Landlord and Tenants. When asked about the fixed term, the Landlord said it was accurate to the best of his knowledge. He then said he signed the agreement but could not recall the term.

The Notice submitted has an effective date of August 31, 2018. The grounds for the Notice are that "The rental unit will be occupied by the landlord or the landlord's close family member..." Given the tenancy agreement is a fixed term agreement ending in 2020, I raised the issue of the effective date of the Notice with the parties prior to hearing the dispute of the Notice.

I told the parties that under section 49(2) of the *Act*, a notice to end tenancy for the purpose listed in the Notice cannot have an effective date that is earlier than the end of the fixed term tenancy. I told the parties that under section 53(1) of the *Act*, the effective date self-corrects and that in this case it would self-correct to June 30, 2020, the end of the fixed term.

I explained to the parties that, when tenants dispute a notice to end tenancy, the outcome is either that the Notice is cancelled or the Notice is upheld and an Order of

Possession is issued effective on the corrected effective date, under section 55 of the *Act* if the Notice complies with section 52 of the *Act*.

I asked the Landlord if he is seeking an Order of Possession based on the Notice. At first, he said he is. I explained to him that it would be for June 30, 2020 and that if he misplaced the Order of Possession between now and then he could not re-apply for an Order of Possession based on the Notice because I would have decided the issue. The Landlord then said he is not seeking an Order of Possession. I told the parties that, in my view, the Landlord is not precluded from seeking an Order of Possession based on the Notice in the future.

I told the Tenants that it was open to them to withdraw the Application. I told the Tenants that if they withdraw the Application, they will be out of time to dispute the Notice in the future. The Tenants said they are fine with vacating the rental unit by June 30, 2020. The Tenants withdrew the Application.

Further to the request of the Tenants, the Application is withdrawn. I note that, pursuant to section 53 of the *Act*, the effective date of the Notice self-corrects to June 30, 2020 and the Tenants must vacate the rental unit by that date. I also note that I did not hear the merits of this matter nor determine the validity of the Notice given the Tenants withdrew the Application.

Conclusion

The Application is withdrawn.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 27, 2018

Residential Tenancy Branch