



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OLC OPL OPB FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants requested:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for landlord’s own use (the 2 Month Notice) pursuant to section 46; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

As the tenant confirmed receipt of the 2 Month Notice on April 29, 2018, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

The tenants confirmed in the hearing that they are no longer seeking an Order for the Landlord to Comply with the Act. Accordingly this portion of the tenants' application was withdrawn.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This 9 month fixed-term tenancy began on September 15, 2017, with monthly rent set at \$1,050.00, is payable on the first day of each month. The landlord collected a security deposit of \$525.00, which the landlord still holds. A copy of the tenancy agreement was included in the evidence. The tenancy was to end on June 23, 2018, but both parties confirmed in the hearing that they understood that under the new legislation that the tenancy continued as a month-to-month tenancy after June 23, 2018.

The landlord issued the 2 Month Notice dated April 29, 2018, with an effective move-out date of June 30, 2018, for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. The landlord testified that the 2 Month Notice was issued as the landlord wished to move back to the residence with his family. The landlord testified that when this tenancy began in September 2017 he had intended to move back to the residence at the end of the fixed-term, and once he became aware that the tenants were not required to vacate in June of 2018 as per the new legislation, he served the tenants with a 2 Month Notice to End Tenancy for Landlord's Own Use.

The landlord testified that he issued the 2 Month Notice in good faith, and that he required the residence as he recently had surgery, and wished to move back while finishing his treatments. The landlord provided confirmation in his evidence of his medical treatments. The landlord testified that he did have another property that was rented out, and not vacant.

The tenants testified that the 2 Month Notice was not issued in good faith, nor was the 2 Month Notice valid as the second page of the 2 Month Notice they received was incomplete as it did not indicate the reason why they were being issued the 2 Month Notice. The landlord submitted in evidence a copy of the 2 Month Notice, and testified that he never served the tenants with an amended 2 Month Notice as the original copy was valid and complete, and evidenced by his own copy. The tenants testified that they had notified the landlord that the 2 Month Notice was not complete, but the landlord failed to address this.

Analysis

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice 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) state the grounds for ending the tenancy, and (e) be in the approved form.

I have reviewed the evidence submitted by both parties for this hearing, including the copies of the 2 Month Notices submitted by both the landlord and tenants. I find that despite the fact that the landlord submitted a version of the 2 Month Notice that was complete, the tenants submitted a different version that fails to comply with section 52 of the *Act*. The onus falls on the landlord to demonstrate that they had served the tenants with a Notice to End Tenancy that complies with the *Act*. In this case, I find that the landlord has not met the burden of proof to show that they had issued a 2 Month Notice to the tenants that clearly stated the grounds for ending this tenancy as required by section 52(d) of the *Act*. As I am unable to verify that the tenants were served with valid version of the 2 Month Notice under the *Act*, I allow the tenants' application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated April 29, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Both parties confirmed that they were aware of the new legislation regarding fixed term tenancies as summarized below. The landlord confirmed that he was aware of this new legislation, and was no longer seeking an end of tenancy pursuant to the fixed-term agreement.

Residential Tenancy Policy Guideline #30 addresses fixed term tenancies. Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term only in specific circumstances.

Subsection G of Residential Tenancy Policy Guideline #30 addresses the circumstances when a landlord may apply for an Order of Possession as summarized below:

G. ORDERS OF POSSESSION AND FIXED TERM TENANCIES

In addition to the procedures under the Legislation for terminating a tenancy for cause or for non-payment of rent, a landlord may apply for an Order of Possession in respect of a fixed term tenancy when any of the following occur:

- a) the tenant has given proper notice to the landlord as a result of a material breach by the landlord;
- b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy for one of the following reasons:
 - i) the tenancy agreement is a sublease agreement; or
 - ii) the tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation;

- c) the landlord and tenant have entered into a written agreement specifying that the tenancy agreement shall end on a specified date.

As noted in the Policy Guideline *“Transitional provisions in the Legislation apply this change retrospectively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.”*

This policy guideline retroactively applies to the current tenancy agreement between both parties, and this tenancy can only be ended in accordance with the *Act*.

As the landlord was not successful in his application, the landlord's application to recover the filing fee is dismissed.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated April 29, 2018, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord's application to recover the filing fee is dismissed without leave to reapply.

Both parties withdrew the remaining portions of their applications.

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 12, 2018

Residential Tenancy Branch