



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlords' Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The tenants attended the hearing via conference call and provided affirmed testimony. The landlords did not attend or submit any documentary evidence. The tenants claim that the landlords were served with the notice of hearing package and the submitted documentary evidence in person on August 19, 2018. I accept the undisputed affirmed testimony of the tenants and find that the landlords were served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. Although the landlords failed to attend and participate in the hearing, I find that they are deemed served as per section 90 of the Act and the hearing shall proceed.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?
Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek an order cancelling the 2 month notice dated August 14, 2018 that was received posted to the tenants' rental unit door on August 14, 2018.

The 2 month notice dated August 14, 2018 sets out an effective end of tenancy date of October 31, 2018 and that the stated reason was:

All of the conditions for the sale of the rental unit has been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The details provided in the purchaser information are:

Selling House

The tenants have provided written submissions stating:

The landlord has not acted in good faith and has not been honest. The property has not been listed yet and the landlord is claiming the purchaser has requested we be given notice to end our tenancy. No purchaser information is provided on the notice.

Analysis

In accordance with subsection 49(8) of the Act, the tenants must file his or her application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenants received the 2 Month Notice on August 14, 2018. The tenants filed the application for dispute resolution on August 17, 2018. Accordingly, the tenants filed within the fifteen day limit provided for under the Act.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based. The landlord did not submit any evidence or appear for this hearing. The landlords did not meet her onus of proof.

The 2 Month Notice dated August 14, 2018 is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

As the tenants have been successful they are entitled to recovery of the \$100.00 filing fee. I authorize the tenants to withhold one-time \$100.00 from the next months' rent upon receipt of this decision in satisfaction of this claim.

Conclusion

The tenants' application is granted.

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: October 04, 2018

Residential Tenancy Branch