



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) by the tenants to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated June 30, 2018 (“2 Month Notice”) and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties did not have any witnesses to present at the hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

Neither party raised any concerns regarding the service or receipt of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Should the 2 Month Notices be cancelled or upheld?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a month to month tenancy began on November 1, 2017. A copy of the tenancy agreement was submitted in evidence. Monthly rent is \$1,300.00 and is due on the first day of each month.

The parties agreed that the landlords served a 2 Month Notice on the tenants on dated June 30, 2018 and was received on the same date. The reason listed on 2 Month Notice states "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child: or the parent or child of that individual's spouse".

The parties agreed that the landlords had attempted to increase the monthly rent to \$1,500.00 and that the tenants objected to that rent increase in writing on June 29, 2018. The following day on June 30, 2018, the landlords served the tenants with the 2 Month Notice citing the reason indicated above.

The landlords testified that their son intends to move into the rental unit due to their son losing their job in Saskatchewan. The landlords testified that their son previously lived in the rental unit between 2014 and 2016. The landlords did not submit any documentation from their son such as a witness statement and did not call their son as a witness during the hearing. The tenants allege that the 2 Month Notice was not issued in good faith as it was served within 24 hours of the tenants objecting in writing to what the tenants' allege was an illegal rent increase.

The landlords testified that their son bought a fifth-wheel trailer ("trailer") that he used for living on their property however can no longer use the trailer as it suffered damaged on the return trip from Saskatchewan on June 20, 2018. The landlords testified that the son has placed the trailer up for sale "as-is" as the gas line was damaged when a tire "blew out" which damaged the underside of the trailer including the gas line. The landlords claim the trailer is no longer inhabitable due to the damaged gas line and a roof leak. The landlords did not submit supporting evidence such as a copy of the trailer for sale or a statement from their son. The only evidence from the landlords is their narrative description of events which the tenants dispute.

The rental property also has a guest suite which is now vacant according to the landlords which the tenants' daughter previously rented and has now vacated. There is

no dispute that the guest suite has a hot plate and microwave and is a “one bedroom open concept” according to the landlords.

The landlords testified that on June 24, 2018 the landlords’ family had a meeting and it was decided that due to their son losing his job in Saskatchewan and the damaged trailer that they would issue the 2 Month Notice so that their son, his 6 year old daughter and their son’s new girlfriend could occupy the bottom suite.

The tenants submitted in evidence a document dated June 11, 2018 from the landlords which reads in part:

“...We welcome you staying in the Suite...

...

As [D] is no longer Barn Manager – there is a Rental Increase to \$1500 – we can either cross out and put the new amount on the form and initial or do up a new Residential Tenancy Agreement...”

[Reproduced as written except for anonymizing name]

The tenants submitted their written response which explains that the attempt at a rent increase to \$1,500 was not legal and was contrary to the *Act*. The landlords testified that the rent amount was discounted due a barn manager role; however, that is not indicated in the tenancy agreement and there is no addendum listed on the tenancy agreement either.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

When tenants dispute a 2 Month Notice, the onus of proof reverts to the landlords to prove that the 2 Month Notice is valid and should be upheld. If the landlords fail to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when tenants have filed to cancel a 2 Month Notice and call into question the “good

faith” requirement, the onus lies on the landlords to prove that the 2 Month Notice was issued with an **honest intention, with no ulterior motive to end the tenancy.**

I have carefully considered all of the evidence and testimony before me and agree with the tenants that the 2 Month Notice was issued with an ulterior motive to end the tenancy and lacked an honest intention. I find the landlords have failed to submit sufficient evidence to prove otherwise as the landlords did not call their son as a witness to provide through direct evidence of his personal situation and decided instead to rely solely on their narrative version of events without a witness statement or witness testimony from the person who they claim will be occupying the rental unit. I also note that there was no statement from their son’s girlfriend either to support that she would also be residing in the rental unit. And most importantly, I find that a mere 24 hours after the tenants had objected to what I find was an illegal rent increase under the *Act*, the landlords then issue the 2 Month Notice which I find is not a coincidence on the balance of probabilities. Therefore, **I cancel** the 2 Month Notices dated June 30, 2018 as I find there is insufficient evidence that the 2 Month Notice was served in good faith.

I order the tenancy to continue until ended in accordance with the *Act*.

I grant the tenants a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The tenants’ application is successful. The 2 Month Notice is cancelled. The tenancy continues until ended in accordance with the *Act*.

The tenants are granted a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 5, 2018

Residential Tenancy Branch