



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M FFT

Introduction

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

- cancellation of the landlord’s 4 Month Notice to End Tenancy for Landlord’s use of the rental property (“4 Month Notice”) pursuant to section 49 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

On November 7, 2018 the director ordered that the dispute resolution proceedings named in separate applications were to be joined and heard together. I will therefore consider the applications of S.M and L.A. jointly.

While both tenants and their advocate attended the hearing by way of conference call, the landlord did not. The tenants were represented at the hearing by their advocate W.G. All parties present were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenants confirmed receipt of the landlord’s 4 Month Notice after it was posted on their door on October 26, 2018. Pursuant to section 88 of the *Act*, the tenants are found to have been duly served with the landlord’s 4 Month Notice in accordance with the *Act*.

The tenants explained they served the landlord with their application for dispute resolution and evidentiary packages by way of Canada Post Registered Mail on November 9, 2018. A copy of the Canada Post Tracking Number was provided to the hearing. Pursuant to sections 88, 89 & 90 of the *Act* the landlord is deemed served with these documents on November 14, 2018, five days after their posting.

The tenants said a second evidentiary package was personally given to the landlord by their advocate, W.G. on November 30, 2018. Pursuant to sections 88 & 90 of the *Act* the landlord is deemed served with this further evidence package on November 30, 2018.

The tenants confirmed receipt of the landlord's evidentiary package after they were individually was posted on their doors on November 24, 2018. Pursuant to sections 88 & 90 of the *Act* the tenants are found to have been duly served with the landlord's evidentiary package on November 27, 2018, three days after having been placed on their doors.

Issue(s) to be Decided

Can the tenants cancel the landlord's 4 month notices?

Are the tenants entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony provided by the tenants explained these tenancies began on September 1, 2013 (L.A.) and in April 2015 (S.M.). Rent for tenant L.A. is currently \$1,105.00 per month, while tenant S.M. pays monthly rent of \$1,130.00. Security deposits were paid at the outsets of each tenancy and continue to be held by the landlord.

On October 26, 2018 the tenants each received 4 Month Notices to End Tenancy.

The tenants' advocate W.G. said that following discussions with the landlord "in the last week of November 2018" W.G. was informed by the landlord that they were no longer pursuing enforcement of the 4 Month Notices dated October 26, 2018.

The parties stated they received an email on December 3, 2018 confirming the above conversation. This was followed by a letter dated December 7, 2018 written by the landlord to the tenants, which said, "I, Z.D., Director of [corporate landlord], rescind both applications filed with the residential tenancy branch of British Columbia." A copy of this letter was provided to the hearing as part of the tenants' evidentiary package.

Analysis

Section 49(8)(b) of the *Act* provides that upon receipt of a 4 Month Notice to end tenancy for landlord's use of property a tenant may, within thirty days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants here filed their application for dispute on November 7, 2018 after having received the 4 Month Notices on October 26, 2018. They have therefore met their obligation under section 49(8)(b) of the *Act*. If a tenant files an application to dispute the

notice within the allowable time frame, the landlord bears the burden of proving the grounds for the 4 Month Notice. Because the landlord did not attend the hearing I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenants' application to cancel the 4 Month Notice.

I note information was provided by the tenants that the landlord had indicated to them that the landlord was withdrawing "their applications"; however, I find this to be problematic as there were no applications from the landlord before me. I find the tenants were successful in cancelling the landlord's 4 Month Notices issued on October 26, 2018 and I find these notices are of no force or effect. These tenancies shall continue until they are ended in accordance with the *Act*.

As the tenants were successful in their application they may pursuant to section 72 of the *Act* each recover the \$100.00 filing fee from the landlord. I direct each tenant to withhold \$100.00 from a future rent payment on **ONE** occasion.

Conclusion

The tenants were successful in cancelling the landlord's 4 Month Notice dated October 26, 2018. These tenancies shall continue until they are ended in accordance with the *Act*.

In full satisfaction for a return of the filing fee, the tenants may each withhold \$100.00 from a future rent payment on **ONE** occasion.

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: December 17, 2018

Residential Tenancy Branch