



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, DRI, OLC

Introduction

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

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlords' Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlords with the notice of hearing package in person on April 14, 2019. The tenants stated that the submitted copy of the notice to end tenancy (page 1) was served to the landlord at the same time as that of the notice of hearing package. The landlords disputed this stating that no documentary evidence was received from the tenants. Both parties confirmed that the landlords served the tenants by placing the submitted documentary evidence "leaning on the door" on May 14, 2019. Neither party raised any other issues with service.

I accept the testimony of both parties and find that the landlords were properly served with the tenants' notice of hearing package as per section 89 of the Act. The tenants were unable to provide any supporting evidence that the copy of the notice to end tenancy was included in the notice of hearing package served upon the landlords on May 14, 2019. However, both parties confirmed that the copy submitted by the tenants

are identical to the copy submitted by the landlords. On this basis, I find that the hearing can proceed. Both parties are deemed sufficiently served with the submitted documentary evidence as per section 90 of the Act.

Preliminary Issue(s)

At the outset the tenants application was discussed and determined that the tenants request for an order determining their dispute of an additional rent increase. The tenants provided details in disputing an “un just rental increaset 9-1-2017, then in December 1 rate increased \$50.00 as of March 1/19 and extended rental agreement 1 year term”. The tenants clarified that the rent increase issue began in 2016 in which the tenants were informed recently that the landlords had increased the rent beyond what was allowed for under the law and was unrelated to the notice to end tenancy dated March 31, 2019.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenants have applied for a determination regarding a rent increase issued in 2016. As this section of the tenants’ application is unrelated to the main section which is to cancel the notice to end tenancy issued for landlords’ use, I dismiss this section of the tenants’ claim with leave to reapply.

It was also discussed and determined that the tenants request for the landlord to comply with the Act, regulations or tenancy agreement were part of the tenants request to cancel the 2 month notice. The tenants stated that the landlords have not allowed for the completion of the tenancy agreement and provided an incomplete notice to end tenancy. As such this portion of the tenants request shall be dealt with as part of the request to cancel the 2 month notice.

The hearing shall proceed on the tenants’ request to cancel the 2 month notice and recovery of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?
Are the tenants entitled to an 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.

Both parties confirmed that the landlords served page 1 only out of 3 to the tenants. The copy provided by both parties were confirmed as that given by the landlords and states in part,

Dated by the landlord, V.M. on March 31, 2019
Served by the landlord on March 31, 2019
Effective end of Tenancy shown as June 1, 2019

The landlords stated that they had provided verbal details of their reasons for ending the tenancy to the tenants.

Analysis

Section 49 of the Act sets out that a landlord may end a tenancy in respect of a rental unit by serving a notice to end tenancy to the tenant.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy by making an application for dispute resolution after the tenant receives the notice.

In this case, both parties confirmed that the landlords had only served to the tenants page 1 out of 3 pages of the 2 Month Notice to End Tenancy Issued for Landlord's Use of Property on March 31, 2019.

Section 49(4) of the Act states in part that a notice under this section must comply with section 52 of the Act which states,

Section 52 of the Act reads in part as follows:

- 52 **In order to be effective**, a notice to end tenancy 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) except for a notice under section 45(1) or (2) [tenant's notice],
state the grounds for ending the tenancy, and
(e) when given by a landlord, be in the approved form.

In this case, both parties confirmed the landlords failed to provide a complete copy of the notice to end tenancy and the stated grounds for ending the tenancy, the landlords have not complied with the statutory requirement established under section 52(d) and (e) of the Act, I find that the landlords' 2 Month Notice is of no effect. For these reasons, I allow the tenant's application to cancel the landlords' 2 Month Notice dated March 31, 2019. The tenancy shall continue.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the next months' rent upon receipt of this decision.

Conclusion

The tenants' application to cancel the 2 month notice 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: May 27, 2019

Residential Tenancy Branch