



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 22, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated May 15, 2019.
- to dispute a rent increase; and
- an order granting the return of the filing fee.

The Landlords, the Tenant T.J., and the Tenants' Representative, M.H., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served the Tenants' Application and documentary evidence package to the Landlords in person on May 22 and again on June 19, 2019. The Landlords confirmed receipt. The Landlords testified that they served the Tenants with their documentary evidence in person on June 15 and again on June 25, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is

dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the Application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Two Month Notice dated May 15, 2019.

The Tenant's request to dispute a rent increase is dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated May 15, 2019, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Tenant testified that their tenancy began over 21 year ago; however, the property changed ownership and that a new tenancy agreement was created on July 1, 2015 with the current Landlords. The Landlords testified that they took possession of the property in May of 2015, therefore, were under the impression that the tenancy began with them on May 1, 2015. Neither party provided a copy of a tenancy agreement to confirm. The parties testified and agreed that the Tenants currently pay rent in the amount of \$820.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$300.00.

The Landlords testified that they served the Tenants in person with the Two Month Notice on May 15, 2019, with an effective vacancy date of July 31, 2019. The Tenant confirmed having received the Two Month Notice on the same day. The Landlords' reason for ending the tenancy on the Two Month Notice is;

"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 Landlords stated that they served the Two Month Notice to the Tenants as they had planned to move the female Landlord's parents into the rental unit. The Landlords testified that the parents gained their Permanent Residence Status and wanted to move into the rental unit permanently, which they provided confirmation of in support. The Landlords stated that the parents traveled to B.C. on June 13, 2019 and have been staying with the Landlords until such a time that they can assume vacant possession of the rental unit in the basement of the residence. The Landlords submitted copies of the flight itinerary in support.

In response, M.H. stated that the Tenants should have been advised of the Landlords' intentions on having the parents move into the rental unit well in advance. M.H. stated that the Permanent Residence Application is a long process, therefore, the Landlords would have known about their intent to obtain vacant possession of the rental unit prior to the Landlords serving the Two Month Notice on May 15, 2019.

M.H. stated that the Tenants are having difficulties finding a new residence and are financially stranded. M.H. stated that the Tenants would have wished to have more notice to find a suitable residence.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlords stated that the female Landlord's parents intend to occupy the Tenants' rental unit.

The Landlords served the Tenants in person with the Two Month Notice on May 15, 2019, with an effective vacancy date of July 31, 2019. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenants received the Two Month Notice on May 15, 2019 and filed their Application on May 22, 2019. Therefore, the Tenants are within the 15 day time limit under the Act.

The Landlords testified that the parents intend to move into the rental unit on August 1, 2019. The Tenant did not dispute that the parents intention to occupy the rental unit, instead focused their reasons for wanting the Two Month Notice cancelled on other factors, such as wishing to have been provided more notice of the Landlords' intent to use the rental unit for their own use, and for financial reasons.

I find that the Landlords were not obligated to provide any additional notice of their intentions to have the parents occupy the rental unit. On a balance of probabilities, I find that it is more likely than not that the Landlords have issued the Two Month Notice in good faith. The Landlords and the Tenants should be aware that if the Landlords fail to follow through on the intended purpose stated on the Two Month Notice, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenants the equivalent of 12 months' rent as a penalty.

As such, I dismiss the Tenants' Application to cancel the Two Month Notice dated May 15, 2019, without leave to reapply.

Under section 55 of the Act, when the Tenants' Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlords an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective on July 31, 2019 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the

Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

As the Tenants were not successful with their Application the Tenants are not entitled to recover the filing fee from the Landlords.

Conclusion

The Tenants' Application seeking cancellation of the Two Month Notice dated May 15, 2019, is dismissed without leave to reapply. The Landlords are granted an order of possession effective on July 31, 2019 at 1:00PM. The order should be served onto the Tenants as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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 04, 2019

Residential Tenancy Branch