



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), for an Order for the Landlords to comply with the *Act*, *Residential Tenancy Regulation* (the “Regulation”), and/or tenancy agreement, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Tenants was present for the hearing while no one called in for the Landlords during the approximately 30 minutes that the phone line was monitored. The Tenant was affirmed to be truthful in his testimony. The Tenant stated that both Landlords were served with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by registered mail. He provided two registered mail tracking numbers which are also included on the front page of this decision. Entering the tracking numbers on the Canada Post website shows that both packages were delivered on September 23, 2019. Therefore, I find that the Landlords were served in accordance with Sections 88 and 89 of the *Act*.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord's Use of Property is upheld, are the Landlords entitled to an Order of Possession?

Should the Landlords be ordered to comply with the *Act, Regulation*, and/or tenancy agreement?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant provided undisputed testimony on the tenancy. The tenancy began in July 2016 and was for a fixed term of one year. A copy of the tenancy agreement was submitted into evidence and states the tenancy start date as July 1, 2016 with a fixed term end date of June 30, 2017. On this tenancy agreement monthly rent was stated as \$2,500.00 due on the first day of each month. The Tenant stated that a security deposit of \$1,250.00 was paid at the start of the tenancy, which is confirmed by the tenancy agreement submitted into evidence.

The Tenant testified that a second fixed term tenancy agreement was entered into with current rent set at \$2,600.00. The Tenant also submitted a copy of this tenancy agreement which indicates the tenancy start date of August 1, 2017 with the fixed term set to end on June 30, 2018. The tenancy agreement confirms monthly rent of \$2,600.00 due on the first day of each month.

The Tenant stated that he received a Two Month Notice after it was posted on their door on August 30, 2019. A copy of the Two Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 effective end of tenancy date was stated as October 31, 2019.

The Tenant stated his position that they do not believe the Landlords have the intention to occupy the rental unit or for a close family member to occupy the unit. The Tenant provided testimony that the Landlords have been asking them to give notice to move out for a long time. He stated that the Landlords had previously listed the rental unit for sale

and told the Tenants that they wanted them to move out so they could sell the rental unit when vacant.

The Tenant stated that on June 4, 2019 the Landlords gave the Tenants informal notice to move out and provided a copy of the letter into evidence. The letter was signed by the Landlords' agent and advises the Tenants that the tenancy agreement ended on June 30, 2018 and that the Tenants are now being asked to move out by July 31, 2019.

The Tenant stated that the Landlords' agent removed the 'for sale' sign from the property and a few days later they received the Two Month Notice.

The Tenants requested an Order for the Landlords to comply and clarified that he wants the Landlords to stop requesting that they move out or provide notice to move out. He also noted that the Landlords had pressured them to sign a new tenancy agreement in 2017 with the increased rent amount of \$2,600.00.

Analysis

Regarding the Tenants' application to cancel the Two Month Notice, as stated in Section 49(8)(a), a tenant has 15 days to dispute a Two Month Notice. I accept the evidence before me that the Two Month Notice was posted on the Tenants' door on August 30, 2019 and therefore find that the notice is deemed to have been received by the Tenants 3 days later, pursuant to the deeming provisions of Section 90 of the *Act*. As the Tenants filed their application to dispute the notice on September 12, 2019, I find that they applied within the time allowable. Therefore, the matter before me is whether the reasons for the Two Month Notice are valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. As the Landlords did not attend the hearing, despite being served with notice of the hearing, I find that I cannot establish that the reasons for the notice are valid. As such, the Tenants are successful in their application to cancel the notice. The Two Month Notice dated August 30, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Regarding the Tenants' application for the Landlords to comply with the *Act*, *Regulation* and/or tenancy agreement, I accept the testimony of the Tenant that that Landlords

have been asking the Tenants to give notice to move out. I caution the Landlords that the tenancy can only be ended in a manner as stated under Section 44 of the *Act*.

Although I find evidence before me that the tenancy agreement signed on July 24, 2017 was for a fixed term set to end on June 30, 2018, I note that there are very specific guidelines in which a tenancy must end at the end of the fixed term. As such, I refer to *Residential Tenancy Policy Guideline 30* regarding fixed term tenancies which states in part the following:

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term in the following circumstances:

- *the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.*
- *the tenancy agreement is a sublease agreement*

Policy Guideline 30 further states:

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable.

Although the tenancy agreement signed on July 24, 2017 was initialled by both parties stating that the Tenants would move out on June 30, 2018, I do not find a reason indicated on the tenancy agreement in accordance with the Policy Guideline. As stated, I also have no evidence before me that the Landlords or a close family member intend to move into the rental unit as required by Section 13.1 of the *Residential Tenancy Regulation*. I also note that over a year has passed since the end of the fixed term tenancy which would imply that the tenancy has been continuing on a month-to-month basis with no intention for the Landlords or a close family member to move in as of June 2018.

As such, I do not have sufficient evidence to establish that the Tenants were to move out at the end of the fixed term tenancy. I also note that the Tenants do not have to move out based on verbal or informal written notice. While I do not find that any specific orders are necessary, I remind the Landlords to familiarize themselves with the ways that a tenancy can end as stated under the *Act*.

Although the Tenant also questioned a rent increase of \$100.00 that occurred when a new tenancy agreement was signed, I refer to Section 43(1)(c) which states that rent may be increased as agreed to by the tenant in writing. Therefore, as both parties signed the new tenancy agreement agreeing to a monthly rent amount of \$2,600.00, I find that this was not an illegal rent increase.

As the Tenants were successful with their application to cancel the Two Month Notice, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment as satisfaction of this amount.

Conclusion

The Two Month Notice dated August 30, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Landlords are ordered to follow the *Act* regarding ending a tenancy.

Pursuant to Section 72 of the *Act*, the Tenants are awarded the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment as recovery of this fee.

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: November 07, 2019

Residential Tenancy Branch