



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FFT MNDCT

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover their filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. I find the landlord was served in accordance with the *Act*.

The tenants stated that they did not receive the landlord's evidence in response to this application but they did receive the landlord's evidence served in response to a prior Residential Tenancy Branch hearing. The tenants agreed to the admission of the landlord's evidence submitted in the previous hearing.

Both parties testified that they have been involved in multiple Residential Tenancy Branch hearings and there was a hearing in October regarding the tenants' application to cancel a previous Two Month Notice for landlord's use. The previous Residential Tenancy Branch hearing number is referenced on the first page of this decision.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the landlord's Two Month Notice pursuant to section 49?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants authorized to recover their filing fee for this application pursuant to section 72.

Background and Evidence

The tenant testified that the landlord served a Two Month Notice on July 22, 2019 which stated that the landlord was ending the tenancy because the landlord wanted to move into the rental unit. The tenant disputed the notice to end tenancy. A hearing was held on October 8, 2019 and the decision was entered on October 11, 2019 cancelling the notice to end tenancy.

The landlord issued another Two Month Notice on October 15, 2019. The new Two Month Notice also states that the landlord was ending the tenancy because the landlord wanted to move into the rental unit.

The tenants also seek an order for monetary damages for compensation for having to address multiple notices to end tenancy issued by the landlord. The tenants requested compensation for consulting lawyers, document copying and mailing expenses and filing fees.

Analysis

The tenants argued that the landlord's Two Month Notice was already adjudicated on a previous Residential Tenancy Branch hearing. Specifically, the tenants argued that the recently disputed a previous Two Month Notice issued by the same landlord and relating to the same issues as stated on the current Two Month Notice. In addition, I find that the decision in the previous hearing was issued on October 11, 2019 and the current Two Month Notice was issued shortly thereafter on October 15, 2019.

Res judicata is a rule in law that a final decision, determined by an adjudicator with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

I find that the previous application for dispute resolution raised the same contentions which the landlord has again asserted in the current Two Month Notice. Specifically, the landlord has requested an end of the tenancy so that he could move into the rental unit in both notices.

I find that the previous matter is related to the same parties and the same issues and a final decision was issued by the previous arbitrator on the merits of the claim. Accordingly, I find that res judicata does apply and I hereby cancel the Two Month Notice. The landlord's Two Month Notice is of no force or effect and this tenancy shall continue until it ends pursuant to the *Act*.

I find that the tenants' legal expenses and hearing preparation costs are not recoverable claims in Residential Tenancy Branch hearings. The Residential Tenancy Act only provides compensation for the reimbursement of the filing fee pursuant to section 72 of the *Act*. Accordingly, I shall deny these claims. However, since the tenants have prevailed in this matter, I grant the tenants' application for reimbursement of the filing fee pursuant to section 72. The tenants are awarded compensation in the amount of \$100.00 which may be recovered by deducting the sum of \$100.00 from ONE future rent payment.

Conclusion

I hereby cancel the Two Month Notice. The landlord's Two Month Notice is of no force or effect and this tenancy shall continue until it ends pursuant to the *Act*.

I grant the tenants' application for reimbursement of the filing fee pursuant to section 72. The tenants are awarded compensation in the amount of \$100.00 which may be recovered by deducting the sum of \$100.00 from ONE future rent payment.

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 19, 2019

Residential Tenancy Branch