



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property, dated March 31, 2020 (“2 Month Notice”), pursuant to section 49;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 12 minutes. The two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The female tenant (“tenant”) confirmed that she had permission to represent the “male tenant” at this hearing. The male tenant did not testify at this hearing.

The tenant testified that she served the landlord with the tenants’ application for dispute resolution hearing package on April 2, 2020, by way of email. She said that she sent it to an email that the tenants have been regularly using to communicate with the landlord. She confirmed that the landlord responded to the email on the same date. In accordance with the Director’s Order, dated March 30, 2020, I find that the landlord was deemed served with the tenants’ application on April 2, 2020, by email.

The tenant confirmed receipt of the landlord’s 2 Month Notice on March 31, 2020. The effective move-out date on the notice is May 31, 2020. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord’s 2 Month Notice on March 31, 2020.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee paid for this application?

Analysis

In accordance with section 3(1) of *Ministerial Order M089*, issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, a landlord is not permitted to issue a notice to end tenancy to a tenant during the period of the order. In this case, the landlord issued the 2 Month Notice, which is dated March 31, 2020, to the tenants on the same date. This is during the period of the above order, which was effective on March 30, 2020.

Section 4(2) of *Ministerial Order M089* states that an Arbitrator must not grant an order of possession under section 55(1) of the *Act* during the period that the above order is in effect. This hearing occurred on May 4, 2020, during the period of the order, which was effective on March 30, 2020.

Accordingly, I allow the tenants' application. As advised to the tenants during the hearing, the landlord's 2 Month Notice, dated March 31, 2020, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*. This tenancy will continue until it is ended in accordance with the *Act*.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I allow the tenants' application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated March 31, 2020, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to deduct \$100.00 from their future monthly rent payable to the landlord for this rental unit and this tenancy, in satisfaction of the monetary award for the filing 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: May 04, 2020

Residential Tenancy Branch