



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On June 30, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting to cancel a Two Month Notice to End Tenancy for Landlord Use of Property (“the Two Month Notice”).

The matter was set for a conference call hearing. The Tenants and Landlord appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. The Landlord testified that he received the Tenants’ documentary evidence. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the 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

- Is the tenancy ending based on the issuance of a Two Month Notice to End Tenancy for Landlords Use of Property?

Background and Evidence

The Landlord and Tenant provided opposing testimony on the whether the tenancy is a fixed term lease or is on a month to month basis.

The Tenants’ testified that a new lease was signed starting March 1, 2020 for a one-year period of time ending on March 1, 2021. The Tenants provided a digital copy of

the tenancy agreement. Upon attempting to open and review the tenancy agreement an error message appeared, and a portion of the tenancy agreement was not viewable. The Tenants were permitted to provide the Residential Tenancy Branch with a new copy of the tenancy agreement via fax following the hearing. The Tenants did provide a copy of the tenancy agreement after the hearing had ended.

The Landlord testified that he has received a copy of the Tenants' evidence and has a copy of the tenancy agreement. The Landlord testified that the agreement indicates that the tenancy starts on March 1, 2020 and continues until March 1, 2021. The Landlord testified that the tenancy agreement is signed by his business partner.

The Landlord testified that the only reason the lease was created was to add a Tenant to the tenancy agreement and facilitate one of the Tenants to apply for the British Columbia Rental Supplement.

The Landlord issued the Tenants the Two Month Notice dated June 25, 2020 and served it on June 28, 2020. The reason for ending the tenancy on the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants' disputed the Two Month Notice on June 30, 2020 within the required time period.

Analysis

Residential Tenancy Policy Guideline #30 Fixed Term Tenancies provides;

A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement and I find that the agreement is for a one year fixed term tenancy that begins on March 1, 2020 and ends March 1, 2021. I find that

the agreement is signed by the Tenants and the Landlord Mr. T.G. on February 28, 2020.

I find that the owner of the rental unit, or the owners agent Mr. T.G. permitted occupation of the rental unit under this tenancy agreement. I find that the fixed term tenancy agreement is an enforceable fixed term tenancy agreement which continues until March 1, 2021.

I find that the Landlord issued the Two Month Notice on June 28, 2020, with an effective date of September 1, 2020. The reason for ending the tenancy is that the rental unit will be occupied by the Landlord or the Landlord's close family member.

I find that the effective date of the Two Month Notice falls on a date that the fixed term tenancy is in effect. I find that the Two Month Notice is not valid because a Landlord cannot give notice for Landlord's use of property that will end a fixed term tenancy before the end of the fixed term.

Two Month Notice to End Tenancy for Landlords Use of Property dated June 25, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application. I authorize the Tenants to deduct the amount of \$100.00 from one future rent payment.

Conclusion

The Tenant's application to cancel the Two Month Notice dated June 25, 2020 is granted. The Two Month Notice is cancelled.

The Landlord cannot give notice for Landlord's use of property that will end a fixed term tenancy before the end of the fixed term. The tenancy will continue until ended in accordance with the Act.

The Tenants are authorized to deduct \$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: July 28, 2020