



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, MNDCT, OLC, FFT**

Introduction

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

- Cancellation of a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") pursuant to section 49;
- A monetary award for damages and loss pursuant to section 67;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal and corporate landlord were represented by the agent CZ (the "landlord").

As both parties were present service was confirmed. The tenant testified that they were served with the 2 Month Notice on or about July 13, 2020. The landlord testified that they were served with the tenant's application and evidence and that they have not served any materials of their own. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the tenants entitled to a monetary award as claimed?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover their filing fee from the landlords?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in June, 2017. The monthly rent is \$3,331.25 payable on the first of each month. There have been two previous hearings under the file numbers on the first page of this decision regarding earlier notices to end tenancy for landlord's use where each of the earlier notices were found to be invalid and cancelled.

In the earlier decision of September 20, 2018 the arbitrator issues the following order:

I find therefore that the Tenants is entitled to an order for compliance and I order the Landlord to refrain from serving notices to end tenancy that have no merit, are baseless or carry the same stated reason based on the same circumstances that have already been decided.

The arbitrator goes on to write:

Should the Landlord serve another notice to end tenancy contrary to the Order above the Tenant has leave to reapply for compensation in relation to this Notice. The Tenants remain at liberty to seek compensation for being given any additional notices to end tenancy for landlord's use that are baseless and result in a loss of quiet enjoyment of the unit.

The landlord has issued a new 2 Month Notice dated July 13, 2020. The reason provided on this notice for the tenancy to end is that the rental unit will be occupied by the landlord the landlord's close family member. The reason provided is the same as that given for the two earlier notices to end tenancy.

The landlord asserted that the personal respondent RQM intends to occupy the rental unit. The landlord provided no further submissions, no details of this intention and no documentary materials in support of this position.

The tenant seeks a monetary award of \$7,200.00. The tenant submits that there was an agreement with the landlord that the landlord would compensate them the amount of \$4,500.00 for water damage that occurred in the rental unit. The tenant testified that this agreement was not documented and the landlord disputed that any such agreement was made.

The tenant further seeks monetary award for loss of quiet enjoyment of the rental suite saying that the landlord's issuance of a third meritless notice to end tenancy has caused them stress and inconvenience in responding and disputing the notice.

The tenant submits that the landlord issued correspondence to them stating that there is a rental arrear and that a collection agency may contact them. The tenant seeks an Order that the landlord comply with the Act, regulations or tenancy agreement and not proceed through a third party collection agency for a rental arrear that has not been determined by the Branch.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 2 Month Notice was received on or about July 13, 2020 and the tenants filed their application for dispute resolution on July 21, 2020. I therefore find that the tenants are within the time limits provided under the Act to dispute the 2 Month Notice.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the 2 Month Notice on a balance of probabilities. In the present circumstance the landlord testified that the personal respondent intends to occupy the rental property but gave no further details, provided no explanation and submitted no documentary evidence in support of this claim. I find, based on the dearth of evidence or substantive submissions, that the landlords have not met their evidentiary onus. I therefore allow the tenants' application and cancel the 2 Month Notice.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant's submission that there was an agreement with the landlord that they would pay the amount of \$4,500.00 to not be sufficiently shown on a balance of probabilities. I find that the tenant's testimony, disputed by the landlord and not supported in any documentary materials, to be insufficient to establish a monetary claim. Consequently, I dismiss this portion of the tenants' application.

I find that the landlord has issued the 2 Month Notice of July 13, 2020 in contravention of the order of September 20, 2018. The order provides no expiration date and I find the reasonable reading to be that the landlord was barred from issuing further notices for the same substantial reasons regardless of the span of time between notices.

While there has been a period of two years during which the landlord has been compliant, it is evident that the present 2 Month Notice has been issued for the same stated reason as the earlier two cancelled notices. The landlord has not submitted any evidence that the circumstances have changed between the previous decisions and the issuance of the present notice.

I accept the testimony of the tenant that the issuance of this new 2 Month Notice for reasons previously adjudicated has caused stress, inconvenience and disturbance. I find it reasonable that a party would expect that a matter that has been the subject of a final and binding decision two years earlier would no longer surface as a judicable issue. The issuance of the present 2 Month Notice on the same basis as the earlier notices is a clear contravention of the order of September 20, 2018. I find the landlord's conduct to be a flagrant violation of the earlier order that has caused stress, uncertainty and disturbance to the tenants. Under the circumstances I find that a monetary award in the amount of \$1,665.63, approximately half of the current monthly rent to be appropriate.

I find there is insufficient evidence that the landlord has violated the Act, regulations or tenancy agreement in their correspondence threatening collection action. I find that the threat issued by the landlord to provide little details or indication that the landlord intends or has the ability to contravene the legislation. While the landlord's correspondence may be interpreted as a threat that they will disregard rule of law and take action without following legislative steps, I find insufficient evidence that there is a real intention that the landlord will violate the Act, regulations or tenancy agreement and find that an order is unnecessary at this time.

As the tenants were successful in their application, they are entitled to recover their filing fee from the landlords.

As this tenancy is continuing, I allow the tenants to recover their monetary award by making a deduction of

Conclusion

The 2 Month Notice of July 13, 2020 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

I issue a monetary order in the tenants' favour in the amount of \$1,765.63. As this tenancy is continuing I allow the tenants to satisfy this monetary award by making a one-time deduction of that amount from their next monthly 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: August 27, 2020

Residential Tenancy Branch