



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:11 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference.

As the tenants confirmed that they received the 2 Month Notice placed on their door or doorstep on June 25, 2020, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

The tenants gave sworn testimony supported by written evidence that they sent the landlord a copy of their dispute resolution hearing package and written evidence by registered mail on July 15, 2020. They provided copies of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with this dispute resolution hearing package including the Notice of Hearing on July 20, 2020, the fifth day after its mailing by the tenants.

At the beginning of this hearing, the tenants confirmed the email address for Tenant BMJS, and agreed that an emailed copy of that decision would be sent to Tenant BMJS for forwarding to the other tenant.

Issues(s) 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 for this application from the landlord?

Background and Evidence

This tenancy began on November 1, 2019 on the basis of an oral agreement between the parties. Monthly rent is set at \$1,300.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$650.00 security deposit for this tenancy. Tenant BJMS testified that they have not yet paid their August 2020 rent because the landlord has not visited their rental unit to obtain their payment. This tenant said that they had spoken with the landlord on the morning of the hearing and had advised that they would obtain the monthly rent that day and pay the landlord if he attended the rental unit.

In their written evidence and in their sworn testimony, the tenants gave undisputed evidence that the landlord only provided them with the first page of the 2 Month Notice. Although this page advised them that their tenancy was to end by August 30, 2020, a 2 Month Notice issued on that date could not have ended their tenancy until at least September 30, 2020. The tenants testified that this first page of the 2 Month Notice that they entered into written evidence did not identify any reason for ending this tenancy. In their application for dispute resolution, the tenants advised that they understood that the landlord was attempting to end this tenancy because the rental property was to be sold. As far as the tenants know, no such sale of the property has occurred.

Analysis

Section 49(7) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Pursuant to section 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

In this case, the tenants have given undisputed sworn testimony and written evidence that they were only provided the first page of the 2 Month Notice, which included no reasons for ending this tenancy for landlord's use of the property. From the undisputed evidence before me from the tenants, I am not satisfied that the first page of the landlord's 2 Month Notice entered into written evidence met the content requirements of section 52 of the *Act*. Under these circumstances, and in the absence of any appearance at the hearing by the landlord to dispute the tenants' application or any written evidence from the landlord, I allow the tenants' application to cancel the landlord's 2 Month Notice.

In so doing and for the information of the parties for the future, I note that a tenancy may be ended by a landlord on the basis of the sale of a property for the following reason:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

As the tenants have been successful in their application to cancel the 2 Month Notice and this tenancy is continuing, I allow them to recover their \$100.00 filing fee from the landlord by reducing a future monthly rent payment by \$100.00

Conclusion

I allow the tenants' application to cancel the 2 Month Notice. The 2 Month Notice of June 25, 2020 is hereby cancelled and of no force or continuing effect.

I order that the tenants are entitled to recover their \$100.00 filing fee for this application by reducing a future monthly rent payment of their choice by \$100.00.

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 07, 2020

Residential Tenancy Branch