



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFL

Introduction

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

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

S.H., counsel for S.H., the landlord and tenant A.L. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue- Amend Style of Cause

All parties agree that S.H. is the previous owner of the subject rental property and that the landlord and his sister purchased the subject rental property in May 2020. The Two Month Notice, which is the subject of this hearing, was served on the tenant by the landlord.

S.H. was listed as a landlord in the tenants' application for dispute resolution.

Section 49 of the *Act*, which is the section which governs the Two Month Notice, defines landlord as:

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

- (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

For the purpose of this application for dispute resolution, S.H. does not meet the definition of landlord. I therefore, pursuant to section 64 of the *Act*, amend the tenants' application for dispute resolution to remove S.H. as a listed landlord. For the purposes of this hearing, S.H. appeared as a witness.

Preliminary Issue- Service

The landlord and the tenant agreed that the tenant sent the landlord her application for dispute resolution via courier in July of 2020. While courier does not meet the service requirements in section 89 of the *Act*, I find that the landlord was sufficiently served, for the purposes of this *Act*, with the tenants' application for dispute resolution, pursuant to section 71 of the *Act*, because the landlord confirmed receipt.

Issues to be Decided

1. Are the tenants entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of tenant A.L.'s and the landlord's claims and my findings are set out below.

Both parties agree that the subject rental property is a house with a main floor suite and two basement suites. The tenants live in the main floor suite and sublet the basement suites.

S.H. and tenant A.L. agree that the tenancy began on or around September 1, 2013. Counsel for S.H. submitted that no tenancy agreement was signed by the tenants and S.H. Counsel for S.H. submitted that S.H. and tenant A.L. had a verbal agreement only and that the verbal agreement was not with tenant M.R.

Tenant A.L. testified that S.H. and tenant M.R., her mother, had a “main lease” for the house and that she had a separate lease with S.H., regarding her personal rent payment. Tenant A.L. testified that these agreements were in writing. No signed tenancy agreements were entered into evidence.

Counsel for tenant S.H. submitted that rent for the entire house was \$2,850.00 per month and that the tenants have not been paying their rent. Tenant A.L. testified that rent for the entire house was \$3,850.00 per month. Tenant A.L. did not dispute having rental arrears.

The landlord testified that on June 25, 2020 he posted the Two Month Notice on the tenants’ door and sent it to the tenants via registered mail. The landlord provided the tracking number for the above package. The tracking number is on the cover page of this decision. Tenant A.L. testified that only two of the four pages of the Two Month Notice were posted on her door. The landlord testified that he did not know if he posted two or four pages of the Two Month Notice on the tenants’ door.

The tenant testified that she did not receive the Two Month Notice via registered mail. The Canada Post tracking website, which I looked up, states that the package was mailed on June 25, 2020 and delivered on June 29, 2020. The landlord testified that he did not know if he put all four pages of the Two Month Notice in the registered mail or if he only included the first two pages. Both parties only entered into evidence the first two pages of the Two Month Notice.

Tenant A.L. testified that the Two Month Notice only states her first name, which is spelt incorrectly, and does not state her surname or the name of tenant M.R. Landlord A.M.S. testified that he did not know the full names of the tenants at the time the Two Month Notice was served because the tenant was not returning his calls or other attempts at communication.

The Two Month Notice was entered into evidence and stated the following reason for ending this tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord testified that he plans on living in the subject rental property with his wife, his sister and his sister's family.

The tenants filed this application for dispute resolution on July 10, 2020.

Analysis

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I find, on a balance of probabilities, that the landlord only served the tenant with the first two pages of the Two Month Notice. I find that in only serving the tenant with the first two pages, landlord A.M.S. breached section 52(e) of the *Act* as the approved form is four pages, not two. The missing two pages contained important information for the tenants on their rights and responsibilities. As the Two Month Notice was not in the correct form, I find that it is null and void. If the landlord wishes to pursue an eviction for landlord's use of property, the landlord must serve the tenant with a Two Month Notice that complies with section 52 of the *Act*. I make no finding on the merits of the Two Month Notice.

As the tenants were successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of

the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The Two Month Notice is null and void. This tenancy will continue on in accordance with the *Act*.

The tenants are entitled to deduct \$100.00, on one occasion, from rent due to the landlord

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 17, 2020

Residential Tenancy Branch