



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, OLC, MNDC, DRI, FF

Introduction

On October 27, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- *To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities received October 7, 2020.*
- *To cancel a Two Month Notice to End Tenancy for Landlords’ Use of Property received on October 2, 2020.*
- *To cancel a Two Month Notice to End Tenancy for Landlords’ Use of Property received on October 20, 2020.*
- *For the Landlord to comply with the Act, Regulation, or tenancy agreement.*
- *For a monetary order for money owed or compensation for damage or loss.*
- *To dispute rent increase that is above the amount allowed by law.*

The matter was scheduled as a teleconference hearing. The Landlords and Tenants appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. 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.

Preliminary and Procedural Issues

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has

applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the issuance of a notice to end tenancy.

The Tenants' other claims are dismissed with leave to reapply.

Issues to be Decided

- Is the tenancy ending based on a notice to end tenancy issued by the Landlord?

Background and Evidence

Both parties testified that the tenancy commenced on May 2, 2019 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,650.00 is due each month. The Landlord and Tenant provided a copy of the tenancy agreement.

The Landlords testified that the residential property was sold, and the purchaser of the property asked for vacant possession.

The Landlord confirmed that the following notice to end tenancy was served to the Tenants.

- Two Month Notice to End Tenancy for Landlords' Use of Property dated September 20, 2020, served on September 24, 2020.

The Landlord selected the following reason for ending the tenancy in the Two Month Notice:

All of the conditions for the 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.

The Landlords and Tenants provided a copy of the Two Month Notice dated September 20, 2020. The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is November 30, 2020.

The Two Month Notice provides the name of the purchaser. The Landlord provided a copy of a Buyers Notice to Seller for Vacant Possession of the rental property which

was signed by the purchaser on September 18, 2020. The Landlords and Tenants provided a copy of the Buyers Notice.

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

The Landlord provided a proof of service document which indicates that on September 24, 2020 the Two Month Notice was served in person to the Tenant, Mr. M.J. The Landlord had a witness present at the hearing who testified that she was present when the Two Month Notice was served to Mr. M.J. on September 24, 2020. The witness testified that the Tenant Ms. J.F. was not present when Mr. M.J. was served with the Notice.

The Tenant, Mr. M.J. was not present at the hearing. The Tenant, Ms. J.F. testified that she did not receive the Two Month Notice until October 2, 2020. The Tenants disputed the Two Month Notice by filing for dispute resolution twenty-five days later on October 27, 2020.

The Landlord is seeking an order of possession for the rental property on the effective date of the Two Month Notice.

Analysis

Section 49 (8) of the Act provides that a tenant may dispute a Two Month Notice by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Section 49 (9) of the Act provides that if a tenant who has received a Two Month Notice does not make an application for dispute resolution within 15 days after receiving the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

The Landlord provided the stronger evidence that the Two Month Notice was served to the Tenant Mr. M.J. on September 24, 2020. I find that the Tenants received the Two Month Notice on September 24, 2020 and applied to dispute the Notice 33 days later,

on October 27, 2020. The Tenants did not dispute the Two Month Notice within 15 days of receiving it. I find that the Tenants are conclusively presumed under the legislation to have accepted that the tenancy ends on November 30, 2020, the effective date of the Notice.

I note that even if the Tenant had received the Two Month Notice on October 2, 2020 as she alleges, the Tenants did not apply to dispute the Two Month Notice within the required time period.

The Tenants' application to cancel the Two Month Notice dated September 24, 2020 is dismissed. The tenancy is ending.

Since the tenancy is ending based on the Two Month Notice dated September 24, 2020 there is no need to consider the whether or not the tenancy should end based on the other notices to end tenancy that were issued.

Section 55 (1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Two Month Notice complies with the requirements of form and content. The Tenants' application is dismissed, and the Landlord's Two Month Notice is upheld. I grant the Landlords an order of possession for the rental unit effective November 30, 2020.

Conclusion

The Tenants' application to dispute the Two Month Notice dated September 24, 2020 is late and is dismissed. The tenancy is ending.

The Landlords sold the residential property and the purchaser wants vacant possession. The Landlord correctly issued a Two Month Notice to End Tenancy for Landlords Use of Property. The Landlord is granted an order of possession for the rental unit effective November 30, 2020.

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: November 26, 2020

Residential Tenancy Branch