



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. This hearing dealt with the tenant's application to cancel the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice), pursuant to section 49 of the *Act*. The tenant also applied to recover the cost of their \$100.00 filing fee from the landlords.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 2 Month Notice by the landlord on January 2, 2021, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord in attendance at this hearing (the landlord) confirmed that both landlords had received copies of the tenant's dispute resolution hearing package sent to them by registered mail on January 18, 2021, I find that the landlords were duly served with these packages in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Is the tenant entitled to recover their filing fee from the landlords?

Background and Evidence

The parties signed a one year fixed term Residential Tenancy Agreement (the Agreement) on November 12 and 16, 2020, that enabled the tenant to take occupancy of the rental unit on December 1, 2020 and continue until December 1, 2021.

The landlords' 2 Month Notice requested the tenant to vacate the rental unit by March 31, 2021, to enable the landlords' son to reside in the rental unit.

In written evidence provided by the landlords prior to this hearing, confirmed by oral testimony given by the landlord at this hearing, the landlord stated that they had made a mistake in issuing the 2 Month Notice prematurely. When they issued it, they did not realize that this option was not available to them after having entered into a fixed term tenancy for this rental unit. The landlord confirmed that they now understood that the earliest possible time that any 2 Month Notice issued to the tenant could take effect would be December 1, 2021, the end date identified in the Agreement. Consequently, the landlord withdrew the 2 Month Notice, stating that they no longer intended to act on that Notice. The tenant agreed with this proposed resolution of this matter.

Analysis

Given that the landlords were not opposing the tenant's application to cancel the 2 Month Notice and did not intend to act on that Notice, I advised the parties that I allow the tenant's application.

Since the tenant's application to cancel the 2 Month Notice was allowed, I permit the tenant to recover their \$100.00 filing fee from the landlords.

Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The 2 Month Notice of January 2, 2021 is set aside and is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant's application to recover their \$100.00 filing fee is allowed. To enable them to recover this amount and as this tenancy is continuing, I order the tenant to withhold \$100.00 from a future 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: February 08, 2021

Residential Tenancy Branch