



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, PSF, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 19, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use;
- an order that the Landlord provide a service or facility; and
- an order granting the return of the filing fee.

The Tenants, the Landlords, and the Landlord's Agents attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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 Matters

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 issue to determine is whether or not the tenancy is ending in relation to the Two Month Notice.

The Tenants' request for an order that the Landlord provide a service or facility is therefore dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 3, 2020. The Tenants are required to pay rent in the amount of \$750.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$375.00 which the Landlords continue to hold.

The parties provided a copy of the Two Month Notice in their documentary evidence. I note that the Two Month Notice is not dated. During the hearing, the Landlords confirmed that they did not date the Two Month Notice and that it was an oversight.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with section 52 of the *Act*.

Section 52 of the *Act* states; 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 that the Two Month Notice to End Tenancy served by the Landlords to the Tenants is not dated. Therefore, I find that the Two Month Notice does not meet the requirements of Section 52 of the Act. I find that the Landlords are not entitled to an Order of Possession. As such, I cancel the Two Month Notice. I order the tenancy to continue until ended in accordance with the Act.

As the Tenants have been successful, I find they are entitled to recover the **\$100.00** filing fee paid to make the Application. I order that this amount may be deducted from one (1) future rent payment.

Conclusion

The Tenants' Application is successful. The Two Month Notice issued by the Landlords does not meet the requirements of Section 52 of the Act and is therefore cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenants are entitled to deduct \$100.00 from one (1) future rent payment for recovery of the filing fee.

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 11, 2021

Residential Tenancy Branch