



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JSR Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, OLC

Introduction

This hearing was convened in response to an application by the Tenants made November 25, 2020 pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing more time to cancel a notice to end tenancy - Section 66;
2. An Order cancelling a notice to end tenancy - Section 47; and
3. An Order for the Landlord’s compliance - Section 62

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenants state that the claim for compliance was in relation to rent increases being sought by the Landlord that are no longer an issue and that the rents have not been raised. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim in relation to the Landlord’s compliance is not related to the matter of whether the tenancy will end, I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Are the Tenants entitled a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on June 1, 2020. Rent of \$1,400.00 is payable on the first day of each month. Nothing in the agreement indicates that no smoking is allowed. The Tenants were given a rental rebate of \$300.00 per month for June, July and August 2020 and thereafter the rent returned to \$1,400.00. On August 8, 2020 the previous landlord served the Tenants with a one-month notice to end tenancy for cause (the "Notice"). the reasons stated for the Notice is that there are an unreasonable number of occupants in the unit and that the Tenant or a person permitted on the property has unreasonably disturbed or significantly interfered with another occupant or the Landlord. The Notice does not set out the address of the rental unit from which the Tenants are required to move.

The Tenant states that upon serving the Notice the Landlord changed the effective date of the Notice from September 30, 2020 to October 31, 2020. The Landlord confirms the effective date of the Notice and confirms that no other notice was given to the Tenants after the Notice was served.

The Landlord argues that the Tenants would reasonably know that they had to move out of their rental address and that this omission may be amended to correct the form and content deficiency. The Tenants state that this omission caused them confusion as the Landlord has been using their unit address as its own address.

The Landlord states that it has no supporting evidence of an unreasonable number of occupants. The Tenants state that only the two of them are residing in the 2-bedroom unit.

The Notice details only that the police were called about noise and fighting by the Tenants. The Landlord confirms it has no supporting evidence of this. The Landlord states that it has evidence from other tenants about the reasons for the Notice. the

Landlord provides an email dated December 8, 2020 from a tenant complaining about smoking. The Landlord provides a text dated November 9, 2020 from another tenant in relation to smoking. The Landlord provides a text dated February 1 and 2, 2021 from another tenant about door slamming by the Tenants.

The Tenants deny that they have done anything to give rise to the reasons for the Notice.

Analysis

Section 52 of the Act provides 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.

Section 47(1)(b) and (d)(i) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if:

- there are an unreasonable number of occupants in a rental unit;
- the tenant or a person permitted on the residential property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The Notice does not set out the rental address from which the Tenants must move out, and given the Tenant's evidence of their confusion with the Landlord's other use of the

dispute address, I find that the Notice may not be reasonably amended in the circumstances. Given this deficiency I find that the Notice is not effective to end the tenancy.

Further, the Landlord has no supporting evidence for either of the reasons stated on the Notice. The Landlord has no supporting evidence of an unreasonable number of occupants and the Tenants give evidence that there are no other occupants in the unit other than themselves. The Landlord's evidence from two of the other tenants does not set out any issues with noise and only refers to smoking. There is nothing in the tenancy agreement that restricts smoking by the Tenants. The evidence from the third tenant is only evidence of noise arising several months after the Notice was issued. This is not relevant evidence of reasons to end the tenancy at the time the Notice was issued. The Tenants' evidence is that there is no valid basis for the Notice. For these reasons I find that the Notice is also not valid for its stated reasons.

Although the Tenants did not apply within the time allowed under the Act to dispute the Notice, I consider that this does not change the outcome as the overall findings are that the Notice is neither effective to end the tenancy nor valid for its stated reasons. I therefore cancel the Notice and find that the Landlord is not entitled to an order of possession.

Conclusion

The Notice is not effective to end the tenancy and there are no valid stated reasons for the end of the tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 8, 2021

Residential Tenancy Branch