



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 2, 2021 (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 of Property (the "Two Month Notice") dated December 23, 2020;
- an order granting the return of the filing fee.

The Tenants, the Landlords, and the Landlords' Representative P.M. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no concerns raised regarding service or receipt of these documents, I find that they were sufficiently served pursuant to Section 71 of the Act.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 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.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice, 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 May 1, 2014. Currently, the Tenants pay rent in the amount of \$1,421.00 which is due to the Landlords on the first day of each month. The Tenants did not pay any deposits at the start of the tenancy. The tenancy is still ongoing.

The Landlords' Representative stated that the Landlords had intended to move into the rental unit currently being occupied by the Tenants as they wished to downsize from their larger home. As such, the Landlords served the Tenants with the Two Month Notice to End Tenancy dated December 23, 2020 with an effective vacancy date of March 1, 2021. The Landlords' reason for ending the tenancy on the Two Month Notice is;

"The rental unit will be occupied by the Landlord or the Landlord's spouse"

The Landlords' Representative stated that shortly after serving the Two Month Notice dated December 23, 2020 the Landlords were presented with an opportunity to sell the rental property, therefore, changing their original plans to occupy the rental unit.

The Landlords' Representative stated that the Landlords chose not to pursue the Two Month Notice dated December 23, 2020 which had been disputed by the Tenants. The Landlords' Representative stated that the Landlords served a new Two Month Notice to End Tenancy for Landlord's Use of the Property dated February 13, 2021 with an effective vacancy date of May 1, 2021. The Landlords' Representative stated that the Landlords have sold the rental property to a new purchaser who was seeking to occupy the rental unit.

The Landlords' Representative stated that the Two Month Notice dated February 13, 2021 is the proper Two Month Notice which states that all 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 Landlord A.M. stated that she served the Two Month Notice dated February 13, 2021 to the Tenants by placing two pages on the counter of the rental unit on February 13, 2021. During the hearing, the Landlord A.M. clarified that one page was the letter from the purchasers indicating that they wished to occupy the rental unit. The other page was the Two Month Notice dated February 13, 2021.

During the hearing the Landlord A.M. stated that after placing the two pieces of paper on the counter, the Tenants stated that they did not want them. The Landlord A.M. stated that she subsequently removed the pieces of paper from the counter and has made no further attempts at re-serving the Tenants with the Two Month Notice dated February 13, 2021.

The Tenants stated that they did not receive the Two Month Notice dated February 13, 2021 and were prepared to proceed with their Application to cancel the Two Month Notice dated December 23, 2020.

Analysis

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

I accept that after the Landlords served the Tenants with the Two Month Notice dated December 23, 2020. I accept that the Landlords changed their minds from wanting to occupy the rental unit to selling the rental property. As such, I cancel the Two Month Notice dated December 23, 2020 as the Landlords are no longer wishing to occupy the rental unit as stated by the Landlords' Representative during the hearing.

The Landlords stated that they served a new Two Month Notice dated February 13, 2021 to the Tenants by placing two pieces of paper on the Tenants' counter on February 13, 2021. The Landlords stated that the Tenants refused the documents and that the Landlords removed the papers from the counter. The Tenants stated that they did not receive the Two Month Notice dated February 13, 2021.

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.**

Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

I find that the Two Month Notice to End Tenancy for Landlord's Use of the Property is a four-page document. In order for the Notice to be effective, all four pages must be served to the Tenants for the Notice to be in the approved form pursuant to Section 52 of the Act. During the hearing the Landlord A.M. stated that she only served the Tenants

with one page relating to the Two Month Notice dated February 13, 2021 by placing it on the Tenants' counter. I find that leaving the Two Month Notice on the counter is not an approved form of service outlined in Section 88 of the Act.

In light of the above, I cancel the Two Month Notice, dated February 13, 2021 as it does not meet the requirements for form and content as outlined in Section 52, and was not served to the Tenants pursuant to Section 88 of the Act. 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 the next month's rent.

Conclusion

The Tenants' Application is successful. The Two Month Notices issued by the Landlords dated December 23, 2020 and February 13, 2021 are cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenants are entitled to deduct \$100.00 from the next month's rent 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: March 26, 2021

Residential Tenancy Branch