



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 1, 2021 (the "Application"). The Tenant 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 January 2, 2021; and
- an order granting the return of the filing fee.

The Tenant, the Tenant's Counsel R.A., the Landlords (purchasers), and the Landlords' Counsel M.D. 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*.

I note, under section 55 of the *Act*, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

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. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is 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 January 1, 2019. The Tenant pays rent in the amount of \$2,800.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$2,800.00 which the Landlords continue to hold.

The Landlords testified that they have purchased the rental property from the seller and intend on moving into the rental unit currently being occupied by the Tenant. The purchasers stated that they instructed the seller to serve the Tenant with the Two Month Notice which was done on January 18, 2021 by Registered Mail. The Two Month Notice has an effective vacancy date of April 1, 2021. The Tenant confirmed having received the Two Month Notice on January 21, 2021. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"All of the conditions for 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 purchasers stated that they have rented out their home and are wishing to upgrade to a larger unit in the rental property. The purchasers stated that the Tenant currently occupies the Penthouse Suite at the rental property, which is the only unit at the rental property that offers 3 bedrooms and 2 baths needed by the purchasers. The purchasers provided a contract of sale in support of the sale.

In response, the Tenant did not dispute that the purchasers intend on occupying the rental unit, however, the Tenant stated that he and the seller entered into a two-year fixed term tenancy on December 2, 2020 prior to the sale being finalized. The Tenant

stated that he has not been provided with a copy of the new fixed term tenancy agreement and suspects that it is being deliberately withheld.

Analysis

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

Subsection 49(5) A landlord may end a tenancy in respect of a rental unit if:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

According to the Policy Guideline 30; A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for landlord's use of property, which may include use by the purchaser of the property, the landlord must serve a proper Two Month Notice to End Tenancy for Landlord's Use of Property (form RTB-32) on the tenant. Before a landlord can serve notice for the purchaser's use of the property, the landlord must have an agreement in good faith to sell the property, all conditions of the sale must have been satisfied and the purchaser must ask the landlord, in writing, to give notice to end the tenancy. The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

The Landlord served the Tenant in person with the Two Month Notice on January 18, 2021 with an effective vacancy date of April 1, 2021 by Registered Mail. The Tenant confirmed having received the Two Moth Notice on January 21, 2021. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on January 21, 2021 and filed the Application on February 1, 2021. Therefore, the Tenant is within the 15 day time limit under the Act.

The Landlords stated that they purchased the rental property from the seller and asked the seller to serve the Two Month Notice to the Tenant as they intend on occupying the rental unit. The Tenant did not dispute that the purchasers intend to occupy the rental unit. Instead, the Tenant stated that he and the seller had entered into a two year fixed term tenancy on December 2, 2020, therefore the Landlords are unable to end the tenancy.

I find that the Tenant has provided insufficient evidence to demonstrate that a fixed term tenancy agreement exists between the parties. I find that the only tenancy agreement provided by either party indicates that the tenancy is now a month to month tenancy. I find that the Landlord was permitted to serve the Two Month Notice.

As such, I dismiss the Tenant's Application to cancel the Two Month Notice without leave to reapply. As the Tenant was not successful, I find that they are not entitled to the return of the filing fee. The Landlords and the Tenant should be aware that if the Landlords fail to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlords an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective two (2) days upon service to the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply. The Landlords are granted an order of possession effective two (2) days upon service. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: May 7, 2021

Residential Tenancy Branch