



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNC, CNL, OLC, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On March 1, 2021, the Tenants applied to cancel a One Month Notice to End Tenancy for Cause. On March 15, 2021, the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlords Use of Property. On April 21, 2021, the Tenants amended their application to include a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent and to request that the Landlords comply with the Act, Regulation, or tenancy agreement.

On April 26, 2021, the Landlords applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 18, 2021.

The matters were set for a conference call hearing. The Landlords and Tenants attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me. The parties were informed that recording the hearing is not permitted.

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.

Issues to be Decided

- Is the tenancy ending due to the Two Month Notice to End Tenancy for Landlords Use of Property?
- Is the Landlord entitled to end the tenancy due to nonpayment of rent?
- Does the Landlord have sufficient reason to end the tenancy for cause?

Background and Evidence

The Landlords and Tenants testified that the tenancy began June 15, 2020. Rent in the amount of \$3,000.00 is due to be paid to the Landlord by the fifteenth day of each month. The Tenants paid the Landlord a security deposit of \$1,500.00.

The Landlords testified that the tenancy is a periodic tenancy on a month to month basis. The Tenants replied that the tenancy is a one-year fixed term tenancy agreement that may continue thereafter on a month to month basis.

Both the Landlord and Tenants provided a copy of a tenancy agreement. The tenancy agreement that is signed by the parties indicates the tenancy is on a month to month basis.

The Tenants stated that at the start of the tenancy they had informed the Landlord that they intended to live in the rental unit for many years and Mr. A.F. stated that they gave post dated cheques to the Landlord which supports their submission that the tenancy was for a one year fixed term. The Tenants did not provide any documentary evidence to support that the parties entered into a fixed term tenancy agreement.

The original Landlords testified that the tenancy was always on a moth to month basis and that the Tenants gave them some post dated cheques.

The Landlords testified that the following notices to end tenancy were issued to the Tenants:

- One Month Notice to End Tenancy for Cause dated February 28, 2021 issued by the previous owners.
- Two Month Notice to End Tenancy due to Landlord's Use of Property dated March 2, 2021 issued by the previous owners at the purchasers (new landlords) request.
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 18, 2021 issued by the new owners.

Two Month Notice

The Landlord testified that the Tenants were served with a Two Month Notice to End Tenancy for Landlords Use of Property dated March 2, 2021. The Landlords testified that the Two Month Notice was served to the Tenants in person.

The Two Month Notice indicates that the rental unit will be occupied by the Landlord or Landlords spouse and:

All of the 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 Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the Two Month Notice on March 15, 2021.

The Landlord testified that he will be moving into the home to live there as his principal residence.

The Tenants were asked to explain why they disputed the Two Month Notice. Mr. A.F. spoke to the other Tenants and replied that their children go to school located two minutes away from the house and they cant have their children moving schools. A.F. also testified that they are a family of six and cannot go right away because there is a pandemic and its difficult to find housing. A.F. testified that they told the Landlord they were willing to live there for a long time.

10 Day Notice

The Landlord testified that the Tenants were also served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 18, 2021. The Notice indicates the Tenants have failed to pay \$3,000.00 that was due on April 15, 2021. The Landlord testified that the 10 Day Notice was served in person on April 18, 2021. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

On April 21, 2021, the Tenants amended their previous application to include a dispute of the 10 Day Notice.

The Landlord testified that the Tenants did not pay the \$3,000.00 owing under the tenancy agreement for April 15, 2021 to May 15, 2021 within 5 days of receiving of the 10 Day Notice. The Landlord testified that the April 2021 rent remains unpaid. The Landlord is requesting an order of possession for the rental unit.

In reply, the Tenants stated that they did not pay the rent because the Landlord has not provided them with information on how to make the rent payment. A.F. testified that the Landlord did not come and get the rent cheque.

The Landlord replied that the Tenants made previous rent payments to the previous Landlords using email money transfers and that the Landlord had many conversations and provided the Tenants with his email address. The Landlord testified that he specifically asked the Tenants to use his email for the rent payment. The Landlord testified that when he attended the rental unit to go pick up a rent cheque, the Tenant refused to pay.

With respect to payment for April 2021 rent, Mr. A.F. stated that they are entitled to a month of free rent due to receiving the Two Month Notice from the Landlord.

One Month Notice

The Landlord testified that the Tenants were served with a One Month Notice to End Tenancy for Cause dated February 24, 2021.

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the One Month Notice on March 1, 2021.

Analysis

Based on the evidence and testimony of the parties before me, and on a balance of probabilities, I make the following findings:

Term of Tenancy

I prefer the evidence from the Landlords that the tenancy is on a month to month basis. The tenancy agreement provided by both the Landlord and Tenants indicates the tenancy is on a month to month basis. Providing a landlord a number of post-dated cheques is not conclusive evidence that a tenancy is for a fixed term. Many tenants on month to month tenancies provide Landlords with post dated cheques. While I accept that the Tenants had an intention to remain living in the rental unit for a long time, there is insufficient evidence from the Tenants to prove that the parties agreed to enter into a fixed term tenancy agreement.

Two Month Notice

I find that the property owner has the right to end the tenancy if they intend in good faith to occupy the rental unit. I accept the Landlord's testimony that he intends to occupy the residential property.

I have considered the Tenants testimony on why the Two Month Notice was disputed. While it is understandable that the Tenants do not wish to move due to schooling, pandemic, and difficulty finding housing, these reasons are not sufficient to cancel a Two Month Notice. A finding of hardship is not a ground where the Two Month Notice can be cancelled.

I have also turned my mind to whether or not the Landlord has an ulterior motive to end the tenancy. The Tenant's provided no testimony that the Landlord has an ulterior motive. I find that there is insufficient evidence from the Tenants to establish that the purchasing Landlord does not have a "good faith" intention to occupy the residential property.

I find that the purchaser / Landlord of the property intends to occupy the rental unit. I find that the Two Month Notice was issued in compliance with section 49(5) of the Act.

The Tenants application to cancel the Two Month Notice to End Tenancy due to Landlord's Use of Property dated March 2, 2021 is dismissed. The tenancy is ending based on the Two Month Notice.

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.

I find that the Two Month Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective two (2) days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Since the tenancy is ending based on the Two Month Notice, the Tenants are entitled to the equivalent of one months' rent under the tenancy agreement.

I find that the rent was paid for March 15, 2021 to April 15, 2021. I find that the Tenants are not required to pay the rent for the period of April 15, 2021 to May 15, 2021. Since the 10 Day Notice was issued due to unpaid rent due April 15, 2021, I cancel the 10 Day Notice.

The Landlord is at liberty to reapply for dispute resolution to make a claim for unpaid rent from May 15, 2021 onwards until the date the Tenants vacate the rental unit.

A tenancy can only end once. There is no need to consider the merits of the One Month Notice.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I decline to order either party to repay the other the \$100.00 fee that was paid to make application for dispute resolution.

Conclusion

The Tenants' Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 2, 2021 is not successful and is dismissed.

I grant the Landlords an order of possession effective two (2) days after service on the Tenants. For enforcement, this order 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: June 08, 2021

Residential Tenancy Branch