



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE PARISH OF ST MARK OCEAN
PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FFT

Introduction

On April 22, 2021, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing; however, the Landlord did not make an appearance at any point during the 19-minute teleconference call. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

P.W. advised that he served an agent of the Landlord with the Notice of Hearing and evidence package by hand on May 7, 2021 and K.S. confirmed that she witnessed this service. As well, they submitted a recording as evidence to corroborate service. In addition, K.S. advised that they served an agent for the Landlord with additional evidence by hand on August 12, 2021. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Tenants' Notice of Hearing and evidence packages. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the most current tenancy started on November 1, 2019, that rent is currently established at \$2,306.00 per month, and that it is due on the first day of each month. They stated that the amount of the security deposit noted on the original tenancy agreement was \$2,250.00; however, they believe they only paid \$1,125.00 for a security deposit. The parties are cautioned that as per Section 19 of the *Act*, the Landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of half of one month's rent payable under the tenancy agreement and that if the Landlord accepts a security deposit or a pet damage deposit that is greater than this amount, the Tenants may deduct the overpayment from rent or otherwise recover the overpayment. A copy of the most current, signed tenancy agreement was submitted as documentary evidence.

They advised that the Landlord served the Notice by posting it to their door on March 28, 2021 and the reason listed on the Notice was because the Landlord wanted to "Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property." The Notice indicated that the effective end date of the tenancy was July 31, 2021.

They testified that the Landlord sent them a letter informing them that the Notice was withdrawn and that they were offered \$150.00 for this inconvenience. P.W. advised that they did not accept this offer and they wished to continue with the Dispute Resolution Proceeding.

They advised that it was their belief that this Notice was not served in good faith and that the Landlord has served them three other notices to end their tenancy within the last eight months, all of which were not valid notices.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Landlord's offer to withdraw the Notice, I find it important to note that Policy Guideline # 11 states:

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below). It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

As the Tenants did not consent to this withdrawal of the Notice, I am satisfied that I can render a Decision on this matter.

Regarding the validity of the Notice, I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy. As such, I am not satisfied of the validity of the Notice, and I find that the Notice of March 28, 2021 is of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of

Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit of March 28, 2021 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: August 27, 2021

Residential Tenancy Branch