



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenants pursuant to the Act for:

- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

Both tenants and both landlords attended the hearing. As both parties were present, service of documents was confirmed. The landlords acknowledged service of the tenant's Application for Dispute Resolution and evidence; the tenants acknowledged service of the landlord's evidence. Neither party raised any issues with timely service of documents.

Issue(s) to be Decided

Should the Two Month's Notice to End Tenancy for Landlord's Use issued by the landlord be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, the landlords stated that the rental unit was sold to new owners on July 1, 2021 and that they are no longer the tenants' landlords. The contact information for the new owners and for their realtor was provided as evidence for this proceeding however nobody representing the new owners attended this hearing.

The tenant JI gave affirmed testimony to advise me that he has spoken to the new owners and that the new owners and the tenants have come to an agreement whereby

the tenants would remain occupying the rental unit until the end of the fixed term of September 30, 2021 as stated in their fixed term tenancy agreement. The landlord TC acknowledged she initialled the latest version of the tenancy agreement provided as evidence in this proceeding to indicate the tenancy would continue until that date.

The tenants seek to recover the filing fee of \$100.00 paid to initiate this dispute. They argue that the landlord ought not have served them with the notice to end tenancy since the landlord and the tenants were bound by the fixed term tenancy that neither party could end before the end of the fixed term. The landlord argued that both her realtor and the new purchaser's realtor were aware that the tenants' fixed term didn't end the tenancy until September 30th, but despite that, the new owners served them with a formal "*tenant occupied property – buyers notice to seller for vacant property*". A copy of the document was provided as evidence by the landlords. In the document, the buyers ask that the seller serve a notice to the tenants pursuant to section 49 of the Act to terminate the tenancy and request the tenants vacate the property by 1:00 p.m. on June 30, 2021.

Analysis

The tenant gave undisputed testimony that the new owner of the rental property agreed that the tenancy would continue until the end of the fixed term, or September 30, 2021 at which time the tenants would vacate the rental unit. As the tenants have already made the arrangements with their current landlords who were not made a party to this Application for Dispute Resolution, I make no order regarding the notice to end tenancy issued by the tenants' former landlords. Nor am I granting an order of possession to the new owners who are not a party to this Application for Dispute Resolution. The portion of the tenants' Application for Dispute Resolution seeking to cancel the notice to end tenancy is dismissed without leave to reapply.

The tenant JI provided undisputed testimony that he met his current landlord and came to an agreement regarding the end of the tenancy. The name and contact information of the current landlord are also listed on the Two Month's Notice to End Tenancy for Landlord's Use served upon the tenant. I find it reasonable that the tenant had in his possession his current landlord's name and address for service.

The current owner of the rental property is the party who issued the "*tenant occupied property – buyers notice to seller for vacant property*" and sought to end the tenancy with the tenant, not the former landlords who attended this hearing. As such, I do not find the former landlords are responsible for reimbursing the tenant with the fee he paid to file the Application for Dispute Resolution. The proper parties to have been named

as respondents to this application, the ones who actually sought to end the tenancy, are the current owners of the rental unit, not the previous landlords.

In order to seek an order that the current landlord pay the filing fee, the tenant should have included his new landlord, the purchase of the rental unit, on his Application for Dispute Resolution or sought an amendment of the application to bring the new landlord into this proceeding as a party in accordance with rule 7.12 of the Residential Tenancy Branch Rules of Procedure. This did not happen and as a result, I find the tenant's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

The tenants' application is dismissed without leave to reapply.

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 31, 2021

Residential Tenancy Branch