



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT
 OPC, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on June 8, 2021. The Tenants applied to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) issued on June 1, 2021, and to recover the filing fee for their application.

The Landlord’s Application for Dispute Resolution was made on May 30, 2018. The Landlord applied to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) issued on June 1, 2021, and to recover their filing fee.

The Tenants attended the hearing and were each affirmed to be truthful in their testimony. As the Landlord is also an applicant to these proceedings, I find that the Landlord has been duly notified of the Notice of Hearing in accordance with the *Act*.

The Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenants were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony 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

- Should the Notice issued June 1, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the recovery of their filing fee for their application?
- Is the Landlord entitled to the recovery of their filing fee for their application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that the tenancy began on May 13, 2021, as a month-to-month tenancy. Rent in the amount of \$1,300.00 is to be paid by the first day of each month, and that the Tenants paid a \$650.00 security deposit. The Tenant provided a copy of the tenancy agreement into documentary evidence.

The Notice records that the Tenants were served with the Notice to End tenancy on June 1, 2021 indicating that the Tenant is required to vacate the rental unit on August 1, 2021. The reason checked off by the Landlord within the Notice was as follows:

- *All of the conditions of the sale of the rental 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 Tenants testified that the new owner had moved into the main unit in the rental property and that they have been paying the rent to the new owner. The Tenants testified that they do not believe that the new owner wishes to end their tenancy. The

Tenants are requesting to cancel the Notice as the Notice was not issued in accordance with the *Act*.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

This matter was set for hearing by telephone conference call at 1:30 p.m. on this date. The line remained open while the phone system was monitored for ten minutes, and the only participant who called into the hearing during this time was the Tenants.

Since the Landlord did not attend the hearing by 1:41 p.m. to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reasons stated. I find that the Landlord has failed to show cause to end the tenancy.

Therefore, I grant the Tenants' application to cancel the Notice issued on June 1, 2021, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. The Tenants are granted permission to take a one-time deduction of \$100.00 from their next month's rent in satisfaction of this award.

Conclusion

The Tenants' application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenants permission to take a one-time deduction of \$100.00 from their next month's rent.

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 12, 2021

Residential Tenancy Branch