



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties confirmed the tenants served the landlord with 4 submitted documentary evidence files with the hearing package. The tenants' remaining 11 documentary evidence were duplicates submitted by the tenants. During the hearing both parties confirmed that the remaining 11 documentary evidence files could be excluded. Both parties confirmed the landlord served the tenants with their submitted documentary evidence via email. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the tenants were served with a 2 month notice to end tenancy for landlord's use of property via email on April 27, 2021.

The 2 month notice provides for an effective end of tenancy date of June 30, 2021 and the reason selected as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent of child of that individual's spouse).

The landlord or the landlord's spouse.

The tenants argue that a fixed term tenancy was made with the landlord beginning on March 1, 2021 ending on February 28, 2022. The tenants did not agree to end their fixed term tenancy early.

The landlord confirmed that a fixed term tenancy agreement was made with the tenants beginning March 1, 2021 and ending on February 28, 2022. However, the landlord argued that an additional condition was added in which both parties agreed to:

...parties agree that if we find a house to buy ourselves, we will give the landlord 2 months written notice to end tenancy contract...

I note that the first word of this addition was not readable.

The landlord also argued that there was not a signed copy of the current tenancy by both parties. The tenants submitted a signed copy by both parties dated January 26, 2021. A review of the copy submitted by the tenant, "Tenancy March 2021" and the copy submitted by the landlord, "2021 Contract" appear to be identical with signatures by both parties dated January 26, 2021.

Analysis

Section 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, both parties confirmed the landlord served the tenants with the 2 month notice dated April 27, 2021.

However, section 49 (2) (a) (iii) a landlord may only end a tenancy by giving notice to end the tenancy,

- Not earlier than 2 months after the date the tenant receives the notice,
- The day before the day in the month, or the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- **If the tenancy is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy**

In this case, I find that there is a fixed term tenancy from March 1, 2021 to February 29, 2022 dated January 26, 2021. On this basis, I find that the tenants have established that the landlord issued a 2 month notice contrary to the Act. As such, the 2 month notice dated April 27, 2021 is set aside and cancelled. The tenancy shall continue.

The tenants are entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenants application is granted.

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: September 13, 2021

Residential Tenancy Branch