



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* ("Act"). A hearing by telephone conference was held on 11:00 am. The Tenant applied for:

- cancellation of the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property dated June 9, 2021 ("2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee pursuant to section 72

The tenant DW and his advocate ("Tenants") and the two landlords ("Landlords") appeared at this participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenants testified that they served a copy of the Notice of Dispute Resolution Proceeding and their evidence ("NOH Package") on each of the Landlords separately by registered mail on July 16, 2021. The Landlords acknowledged receiving the NOH Package on July 19, 2021. I find the Landlords were served with the NOH Package in accordance with sections 88 and 89 of the Act.

The Tenants stated that they served additional evidence on the Landlords on October 16, 2021 and the Landlords acknowledged receiving the additional evidence. I find the Landlord's were served with the Tenants' additional evidence in accordance with section 88 of the Act. The Landlords stated they did not serve any evidence on the Tenants.

Issue(s) to be Decided

- Are the Tenants entitled to cancellation of the 2 Month Notice;
- Are the Tenants entitled to authorization to recover the filing fee pursuant to section 72; and
- If the Tenants fail in their application, are the Landlords entitled to an Order of Possession pursuant to section 55.

Background and Evidence

The parties agree that this month-to-month tenancy commenced on December 1, 2018. The Tenants are required to pay rent of \$900.00 on the 1st of day of each month. A security deposit of \$350.00 was paid by the Tenants and the Landlords confirmed that they are continuing to hold the security deposit. The Landlords confirmed that the Tenants paid the rent in full until October 31, 20 2021.

The Landlords testified they served the Tenants with the 2 Month Notice on the Tenants' door on June 9, 2021 and the Tenants admitted receiving the 2 Month Notice on June 12, 2021.

The Landlords testified they required the rental unit for their own use. The Landlords stated their youngest son, who is currently living with them upstairs, is engaged to his girlfriend. The Landlords also stated that they intend to move to the downstairs rental unit for their own use so that their son and his fiancé may live in the upstairs level of the residential premises.

The Tenants testified they did not believe the Landlords were acting in good faith when they issued the 2 Month Notice. The Tenants testified there had been an illegal rent increase. The Tenants stated the Landlords withheld laundry service for a period of time until an advocate had contacted the Landlords requesting the Tenants be given access to the laundry facilities. The Tenants also stated there had been continuing problems with the plumbing but admitted the problems had been resolved after an advocate had contacted the Landlord. The Tenants stated the Landlords only served them with the 1st page of the 2 Month Notice.

The Landlords testified the laundry had been withheld for only a week or so until repairs had been completed on the washer. They stated the plumbing issues had been resolved after 4 visits by plumbers at an aggregate cost of about \$1,500.00. The Landlords admitted they had only served page 1 of the 1 Month Notice as they didn't

realize all pages of a 1 Month Notice to End Tenancy were required to be served on the Tenants.

Analysis

Subsections 49(2) and 49(3) of the Act read in part as follows:

- 49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy
- (a) for a purpose referred to in subsection (3), (4) or (5) *by giving notice to end the tenancy* effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or ...
- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[italics added]

Section 52 of the Act reads in part as follows:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) *when given by a landlord, be in the approved form.*

[italics added]

Accordingly, in order to end a tenancy for landlord's own use, the Landlords were required to serve the Tenant with a Two Month Notice to End Tenancy. The Two Month Notice must comply with the provisions of section 52 of the Act. In this case, the Landlord did not serve pages 2, 3 and 4 of the 2 Month Notice. Page 2 of a Two Month Notice is where a landlord is required to state the grounds for the Two Month Notice. Pages 3 and 4 of a Two Month Notice warns a landlord that the landlord has to intend in good faith to accomplish the purpose for ending the tenancy. Pages 3 and 4 of a Two Month Notice also provide important information to tenant regarding their right to compensation from the landlord, potential eligibility to vacate the rental unit early, and entitlement to additional compensation equal to 12 months' rent if the landlord does not take steps toward the purpose for which the Two Month Notice was given.

I find the 2 Month Notice served on the Tenant is deficient in that it was missing pages 2, 3 and 4 of the prescribed form for a Two Month Notice. As the 2 Month Notice does not comply with section 52 of the Act, I allow the Tenants' application to cancel that Notice.

I allow the Tenants' application to cancel the 2 Month Notice dated June 9, 2021. This tenancy continues until ended in accordance with the Act.

As the Tenants have been successful in this application, I grant the Tenants recovery of the filing fee of \$100.00.

Subparagraph 72(2)(a) of the Act reads in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other ... the amount may be deducted ... in the case of payment from a landlord to a tenancy, from any rent due to the landlord...

The Tenants are allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlords when this deduction is made. The Landlords may not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenants.

Conclusion

I grant the Tenants application seeking cancellation of the Landlords' 2 Month Notice and the Notice is cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

The Tenants are ordered to deduct \$100.00 from next month's rent in satisfaction of their monetary award for recovery of the filing fee.

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: October 26, 2021

Residential Tenancy Branch