



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL-MT OLC RP FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to allow a tenant more time to make an application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 29, 2021 (2 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the unit, site or property, and to recover the cost of the filing fee.

The tenants, the landlord and an agent for the landlord, MD (agent) attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to more time to make an application to cancel a 2 Month Notice?
- If yes, should the 2 Month Notice be cancelled?
- If no, does the 2 Month Notice comply with section 52 of the Act?
- If yes, should an order of possession be granted to the landlord?
- Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

The tenants testified that they received the 2 Month Notice via email on January 3, 2022 and that the email was dated December 29, 2021. The tenants later testified that the 2 Month Notice was blank, attached to the December 29, 2021. The tenants did not file their application until February 1, 2022.

The tenants referred to their documents evidence, which indicates a response to the landlord dated January 31, 2021 and confirms the contents of the 2 Month Notice dated December 29, 2021, by stating that the landlord included the phone number for tenant KB, but did not name KB, which I will address further below.

The 2 Month Notice indicates the following on page 2:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). Please indicate which close family member will occupy the unit. <div><input type="radio"/> The landlord or the landlord's spouse <input checked="" type="radio"/> The child of the landlord or landlord's spouse <input type="radio"/> The father or mother of the landlord or landlord's spouse</div>
<input checked="" type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
<input type="checkbox"/>	All of the conditions for the sale of the rental unit 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.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's request to allow more time to make an application to cancel the 2 Month Notice - Section 66(1) of the Act applies and states:

Director's orders: changing time limits

66(1) The director may extend a time limit established by this Act only in **exceptional circumstances**, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.
[emphasis added]

In the matter before me, I find the tenants failed to provide sufficient evidence to support that any exceptional circumstances existed to support why the tenant waited beyond the

statutory deadline of 15 days to dispute a 2 Month Notice. Sections 49(8) and 49(9) of the Act apply and state:

Landlord's notice: landlord's use of property

49(8) A tenant may dispute

(a) **a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or**

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) Landlord's notice: landlord's use of property

(a) **is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

(b) must vacate the rental unit by that date.

[emphasis added]

I find the testimony of the tenants contradict their documentary evidence, which I find supports that the tenants referenced the contents of the 2 Month Notice dated December 29, 2021, even though they claim it was blank. Therefore, I find the tenants are not credible and afford no weight to their testimony as a result.

Regarding the 2 Month Notice; however, I find it does not comply with section 52 of the Act as the landlord incorrectly stated 2 reasons on the 2 Month Notice, and that the 2 reasons contradict each other with the first reason saying a child of the landlord or landlord's spouse or close family member will be moving into the rental unit, while the second reasons says the landlord is a family corporation. I have no written tenancy agreement to support that the landlord is a family corporation. I will address the fact that there is no written tenancy agreement later in this Decision.

Therefore, while **I dismiss** the tenants' application in full, without leave to reapply, as the tenants provided contradictory evidence, I decline to grant an order of possession to the landlord as I find the 2 Month Notice does not comply with section 52 of the Act. Section 55 of the Act requires that in order to issue an order of possession, the Notice to End Tenancy must comply with section 52 of the Act. The landlord is at liberty to issue a new 2 Month Notice that complies with section 52 of the Act.

I caution the tenants not to provide contradictory evidence in the future at a dispute resolution hearing.

I caution the landlord to comply with section 13(1) of the Act in the future, which requires that all tenancy agreements must be in writing entered into after January 1, 2004 and to ensure that all future Notices to End Tenancy comply with section 52 of the Act.

I do not grant the filing fee as the tenants' application was dismissed.

Conclusion

The tenants' application fails and is dismissed in full due to insufficient evidence, without leave to reapply.

The tenancy shall continue until ended in accordance with the Act as the 2 Month Notice did not comply with section 52 of the Act and is therefore of no force or effect.

The filing fee is not granted.

The decision will be emailed to both parties.

Both parties have been cautioned.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 6, 2022

Residential Tenancy Branch