



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and her Legal Counsel attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that they was not recording this dispute resolution hearing.

The Landlord personally served the Two Month Notice on March 26, 2022. The Tenants' Notice of Dispute Resolution Proceeding states that the Two Month Notice was personally served on March 26, 2022. I find that the Two Month Notice was served on the Tenants on March 26, 2022 pursuant to Section 88(a) of the Act.

The Tenants did not serve their Notice of Dispute Resolution Proceeding package for this hearing on the Landlord (the “NoDRP package”). The Landlord confirmed that she was in contact with the RTB and an Information Officer sent them a copy of the NoDRP package on July 14, 2022. I find that the Landlord was sufficiently served with the NoDRP package for this hearing on July 14, 2022, in accordance with Section 71(2)(c) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord’s Two Month Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this tenancy began as a fixed term tenancy on July 1, 2021. The fixed term ended on July 1, 2022. Monthly rent is \$2,150.00 payable on the first day of each month. A security deposit of \$990.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that 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. The effective date on the Two Month Notice was June 1, 2022.

The Landlord’s Legal Counsel said that this Two Month Notice was withdrawn on May 9, 2022 because it overlapped with the end date of the fixed term tenancy. The Landlord uploaded an email from the Landlord’s Legal Counsel to the Tenants instructing that the *“landlord has decided to cancel the initial 2 month notice dated March 26, 2022.”* The Landlord issued a second Two Month Notice on April 19, 2022 which is not the subject of this hearing. The Landlord believes that the Tenants have vacated the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Landlord's notice: landlord's use of property

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*

...

(iii) *if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy,*
or (emphasis mine)

The Landlord withdrew the Two Month Notice which was served on the Tenants on March 26, 2022 with an effective date of June 1, 2022. This was a fixed term tenancy, with an end date of July 1, 2022. The Landlord is correct to withdraw their first Two Month Notice, as she cannot end this fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term pursuant to Section 49(2)(iii) of the Act. I find that the Two Month Notice is canceled, and the tenancy shall continue until ended in accordance with the Act.

The Landlord believes that the Tenants have vacated the rental unit. As the Tenants did not attend this hearing, I decline to order the return of their application filing fee.

Conclusion

The Landlord's Two Month Notice is cancelled and the tenancy shall continue until ended in accordance with the Act.

The Tenants are not entitled to the return of the application 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 Act.

Dated: July 26, 2022

Residential Tenancy Branch